



Planning
Inspectorate

The Planning Act 2008

Rampion 2 Offshore Wind Farm Extension Project

Examining Authority's Recommendation to the
Secretary of State for Energy Security and Net Zero

PART A: THE RECOMMENDATION

Examining Authority

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6 NOVEMBER 2024

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OVERVIEW

File Ref: EN010117

The application, dated 10 August 2023, was made under section (s) 37 of the Planning Act 2008 (PA2008) and was received in full by the Planning Inspectorate on 10 August 2023.

The Applicant is Rampion Extension Development Limited.

The application was accepted for Examination on 7 September 2023.

The Examination stage of the application began on 6 February 2024 and was completed on 6 August 2024.

The Proposed Development comprises the construction of an offshore windfarm of up to 90 wind turbine generators, together with offshore and onshore cable routes, offshore and onshore substations and ancillary development.

Summary of Recommendation:

The Examining Authority recommends that the Order is made in the form attached.

APPENDICES

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

PART A:

THE RECOMMENDATION

1.	INTRODUCTION TO THE APPLICATION.....	6
1.1.	EXPLANATION OF THE EXAMINATION AND REPORTING PROCESS	7
1.2.	APPOINTMENT OF THE EXAMINING AUTHORITY	8
1.3.	THE APPLICATION	8
1.4.	LOCATION OF THE PROPOSED DEVELOPMENT	9
1.5.	NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS (NSIP).....	10
1.6.	ENVIRONMENTAL IMPACT ASSESSMENT	11
1.7.	HABITATS REGULATIONS ASSESSMENT	12
1.8.	COMMITMENTS REGISTER	12
1.9.	PROCEDURAL DECISIONS	12
1.10.	PRE-EXAMINATION.....	13
1.11.	THE EXAMINATION	14
1.12.	UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS	17
1.13.	OTHER CONSENTS AND LICENCES	17
1.14.	OUTSTANDING MATTERS AT THE CLOSE OF THE EXAMINATION	17
2.	DETERMINING THE APPLICATION	18
2.1.	INTRODUCTION	18
2.2.	KEY LEGISLATION	18
2.3.	NATIONAL POLICY STATEMENTS.....	20
2.4.	OTHER RELEVANT NATIONAL POLICIES	21
2.5.	REGIONAL AND LOCAL PLAN POLICIES	22
2.6.	MADE DEVELOPMENT CONSENT ORDERS.....	22
2.7.	TRANSBOUNDARY EFFECTS	22
3.	ASSESSMENT OF THE PLANNING ISSUES	24
3.1.	INTRODUCTION	24
3.2.	THE NEED FOR THE PROPOSED DEVELOPMENT	25
3.3.	ALTERNATIVES	28
3.4.	OFFSHORE AND INTERTIDAL ORNITHOLOGY	43
3.5.	MARINE MAMMALS	53
3.6.	FISH AND SHELLFISH.....	73
3.7.	COASTAL PROCESSES AND BENTHIC SUBTIDAL AND INTERTIDAL ECOLOGY	107

APPENDICES

Rampion 2 Offshore Wind Farm Extension Project
REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November
2024

3.8.	COMMERCIAL FISHERIES	131
3.9.	SHIPPING AND NAVIGATION	141
3.10.	AVIATION	148
3.11.	MARINE ARCHAEOLOGY	156
3.12.	TERRESTRIAL ECOLOGY AND NATURE CONSERVATION ..	160
3.13.	SEASCAPE, LANDSCAPE AND VISUAL EFFECTS	218
3.14.	HISTORIC ENVIRONMENT	233
3.15.	TRAFFIC AND ACCESS	245
3.16.	AIR QUALITY.....	274
3.17.	SOILS AND AGRICULTURE	283
3.18.	MINERALS SAFEGUARDING AND GROUND CONDITIONS...	291
3.19.	WATER ENVIRONMENT	303
3.20.	POPULATION AND HUMAN HEALTH	328
3.21.	NOISE AND VIBRATION	337
3.22.	SOCIO-ECONOMICS	353
3.23.	WASTE MANAGEMENT	359
3.24.	GOOD DESIGN	362
3.25.	GREENHOUSE GAS EMISSIONS.....	367
3.26.	MAJOR ACCIDENTS AND DISASTERS.....	373
3.27.	INTER-RELATED AND CUMULATIVE EFFECTS (INCLUDING THE SOUTH DOWNS NATIONAL PARK)	375
3.28.	OVERALL SUMMARY	383
4.	FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT	384
4.1.	INTRODUCTION	384
4.2.	FINDINGS IN RELATION TO LSE	387
4.3.	CONSERVATION OBJECTIVES.....	393
4.4.	FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI)	396
4.5.	ENGAGING WITH THE HRA DEROGATIONS	407
4.6.	CONSIDERATION OF ALTERNATIVES	407
4.7.	IMPERATIVE REASONS OF OVERRIDING PUBLIC INTEREST (IROPI)	409
4.8.	COMPENSATORY MEASURES	410
4.9.	HRA CONCLUSIONS	415
5.	CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT.....	417
5.1.	INTRODUCTION	417
5.2.	THE PLANNING BALANCE.....	417
5.3.	ASSESSMENT AGAINST S104 OF THE PLANNING ACT 2008	432

APPENDICES

Rampion 2 Offshore Wind Farm Extension Project
REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November
2024

6.	LAND RIGHTS	436
6.1.	INTRODUCTION	436
6.2.	LEGISLATIVE REQUIREMENTS	437
6.3.	THE REQUEST FOR CA AND TP POWERS	439
6.4.	THE PURPOSE FOR WHICH LAND IS REQUIRED.....	441
6.5.	EXAMINATION OF THE CA AND TP CASE	443
6.6.	STATUTORY UNDERTAKERS LAND, RIGHTS AND APPARATUS	454
6.7.	EXA's CONCLUSIONS ON THE CASE FOR CA AND TP	473
6.8.	THE EXA's RECOMMENDATIONS ON CA AND TP	477
7.	DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS	479
7.1.	INTRODUCTION	479
7.2.	THE ORDER AS APPLIED FOR	479
7.3.	ITERATIONS OF THE DRAFT DCOs	480
7.4.	CONTENTIOUS MATTERS IN THE EXAMINATION	481
7.5.	ExA's CONSULTATION DRAFT DCO	489
7.6.	PROTECTIVE PROVISIONS	493
7.7.	ExA's RECOMMENDED CHANGES	499
7.8.	KEY OUTSTANDING MATTERS	507
7.9.	CONCLUSIONS	509
8.	SUMMARY OF FINDINGS AND CONCLUSIONS	510
8.1.	INTRODUCTION	510
8.2.	CONSIDERATION OF FINDINGS	510
8.3.	CONCLUSION	511
8.4.	MATTERS FOR THE SECRETARY OF STATE	512

APPENDICES I

APPENDIX A: REFERENCE TABLES	All
APPENDIX B: LIST OF ABBREVIATIONS	BI
APPENDIX C: THE RECOMMENDED DCO	CI

APPENDICES

Rampion 2 Offshore Wind Farm Extension Project
REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November
2024

LIST OF FIGURES AND TABLES

Figure 1 – Wireframe View of Rampion 1 OWF and the Proposed Development [APP-092]	8
Figure 2 – Route Map and the host Local Authorities [APP-074]	10
Table A – Comparison of Topic Areas Between NPS EN-1 2011 and 2024	20
Figure 3 - Excerpt showing reduction of Order limits [APP-075]	29
Figure 4 - Landfall to National Grid substation options [APP-075]	30
Figure 5 - Offshore cable corridor [APP-075]	32
Figure 6 - Shortlisted two sites for the onshore substation and potential cable routes [APP-075]	33
Figure 7 - Constraints of the Fawley National Grid Substation [REP1-019]	36
Figure 8 - Constraints of the Dungeness National Grid Substation [REP1-019]	37
Figure 9 – Order limits in relation to the Kingmere MCZ	77
Figure 10 – Proposed Piling Exclusion Zone.....	79
Figure 11 – ICES Rectangle 30E9 [APP-083]	132
Figure 12 – 1.3nm x 3.6nm Structure Exclusion Zone [APP-155]	143
Figure 13 – Definitions of Significance [REP6-129].....	150
Figure 14 - Access point to the Oakendene Substation site and surrounding area including Kent Street [APP-076]	251
Figure 15 - WTG maximum design scenarios [PEPD-041]	363
Table B - European sites and features for which LSE could not be excluded.....	390
Table C - European sites in unfavourable declining condition.....	393
Table D - European Sites in unfavourable no change condition	394
Table E - European Sites in unfavourable recovering condition.....	394
Table F - European sites (UK) where conservation status is unknown.	395
Table G – Excluded sites for AEoI.....	396
Figure 16 – Land Rights Flow Chart.....	449
Table H – Relevant Crown authorities from which written consent had not been received for the Proposed Development by the end of the Examination.....	477
Table I - Summary of ExA's Schedule of Changes to the draft DCO in respect to Article 5	483
Table J - Summary of ExA's Consultation Draft DCO on Schedules 11 and 12 on MMO Issues	486
Table K - Summary of ExA's Schedule of Changes to the draft DCO, whether the change was accepted by the Applicant, and the ExA's response to the reasons given.....	489

Table L - ExA’s Recommended Changes to the Final Draft DCO [REP6-007] 499

Table M - Additional Changes sought by IPs not being recommended by the ExA
..... 508

PART B:

[THE EXAMINATION LIBRARY](#)

PART C:

**COMPULSORY ACQUISITION, TEMPORARY POSESSION,
LAND AND/OR RIGHTS OBJECTIONS CONSIDERED IN
WRITTEN AND ORAL PROCESSES – To be read alongside
the [Land Rights Tracker](#)**



Examining authority's Report of Findings and Conclusions and
Recommendation to the Secretary of State for the Department of
Energy Security and Net Zero, dated 6 November 2024

Corrections agreed by the Examining Authority prior to a decision
being made

Page No.	Para	Error	Correction
17	1.12.1	"Heats of Terms"	Should state " Heads of Terms"
27	3.2.14	"been full reviewed"	Should state "been fully reviewed"
35	3.3.31	"and important"	Should state "and importantly "
41	3.3.60	"Wineham lane North" "Wineham Lane North also within"	Should state "Wineham Lane North" Should state "Wineham Lane North is also within"
71	3.5.108	"Condition 11(j)"	Should state "Condition 11(1)(j)"
128	3.7.146	"[REP6-081]"	Should state "[REP6-181]"
159	3.11.26	"has been designed sensitivity taking"	Should state "has been designed sensitively taking"
166	3.12.44	"on induvial aspects"	Should state "on individual aspects"
197	3.12.223	"the Applicant reiterated that trenchless crossings are considered feasible in the locations identified in the crossing schedule [APP-122] but should a trenchless crossing be required in a location where a trenchless crossing is proposed, this would require a variation to the Order on an alternative consent."	Should state "the Applicant reiterated that trenchless crossings are considered feasible in the locations identified in the crossing schedule [APP-122] but should an open cut trench be required in a location where a trenchless crossing is proposed, this would require a variation to the Order or an alternative consent."
217	3.12.340	"delivery of winder environmental"	Should state "delivery of wider environmental"

221	3.13.19	"considered together in this"	Should state "considered together in this section. "
240	3.14.43 and 3.14.44	"Arundle Castle"	Should state " Arundel Castle"
293	3.18.9	"a MMP will developed"	Should state "a MMP will be developed"
294	3.18.15	"are a rage of sensitivities"	Should state "are a range of sensitivities"
297	3.18.27	"contain fuller information"	Should state "contain further information"
316	3.19.76	"for surface and foul) water drainage in the draft DCO"	Should state "for surface and foul water drainage in the draft DCO"
319	3.19.93	"confirmed is satisfied"	Should state "confirmed it is satisfied"
340	3.21.18	"for developers),"	Should state "for developers,"
340	3.21.20	"(2009"	Should state "(2009)"
349	3.21.79	"of air quality had"	Should state "of noise and vibration had"
354 and 358	3.22.10 and 3.22.39	"there will be minor to moderate effects upon access to and enjoyment of onshore recreation activity"	Should state "there will be minor to moderate adverse effects upon access to and enjoyment of onshore recreation activity"
360	3.23.10	"site and rem".	Should state " Site Waste Management Plan ".
362	3.24.3	"including AIS and GIS options"	Should state abbreviations in full "including air insulated switchgear (AIS) and gas insulated switchgear (GIS) options"
368	3.25.7	"constiction phase"	Should state " construction phase".
423	5.2.52	"delivery of winder environmental net gains"	Should state "delivery of wider environmental net gains"
465	6.6.93	"There would be any impact upon the use of the land during the construction of the Proposed Development..."	Should state "There would not be any impact upon the use of the land during the construction of the Proposed Development..."
493	7.6.1	"NH and National Grid"	Should state "NH and National Grid."

1. INTRODUCTION TO THE APPLICATION

1.1. EXPLANATION OF THE EXAMINATION AND REPORTING PROCESS

- 1.1.1. Examination under the Planning Act 2008 (PA2008) is primarily a written process, in which the Examining Authority (ExA) has regard to written material forming the application and arising from the Examination.
- 1.1.2. The ExA's Recommendation comprises three parts.
- 1.1.3. Part A is this Recommendation which sets out our findings on the Proposed Development, and which is structured as follows:
- **Section 1** is this section, the introduction to the application.
 - **Section 2** records the policy background in determining the Proposed Development.
 - **Section 3** provides a commentary and conclusions in relation to the planning issues.
 - **Section 4** sets out the findings and conclusions in relation to the Habitats Regulations Assessment (HRA).
 - **Section 5** sets out the balance of planning considerations arising from Sections 3 and 4 of the Recommendation and applies the tests of s104 of the PA2008.
 - **Section 6** sets out the ExA Examination of Land Rights proposals.
 - **Section 7** considers the implications of the matters arising from the preceding Sections for the Recommended Development Consent Order (Recommended DCO).
 - **Section 8** summarises all relevant considerations and sets out the ExA recommendation to the Secretary of State.
 - **Appendix A** – Reference Tables.
 - **Appendix B** – List of Abbreviations.
 - **Appendix C** – The Recommended DCO.
- 1.1.4. Part B comprises the Examination Library (EL) and should be read alongside this Recommendation. All documents and representations from Interested Parties (IPs) in the EL have a unique reference number e.g. [APP-001] which will be used throughout this Recommendation to allow the reader to access the source. The EL is hyperlinked, and when read alongside this Recommendation, will allow the Secretary of State to easily access the document in question. The ExA will also refer to a particular document by its Deadline number.
- 1.1.5. Part C comprises a list of compulsory acquisition (CA), temporary possession (TP), land and/or rights objections considered during the written and oral processes. It should be viewed alongside Applicant's Land Rights Tracker (LRT) [REP6-018]; this is discussed in more detail below and in Section 6 of this Recommendation.
- 1.1.6. This Recommendation does not contain extensive summaries of all documents and representations received, although full regard has been had to them and all important and relevant matters arising. Key written sources are set out further below.

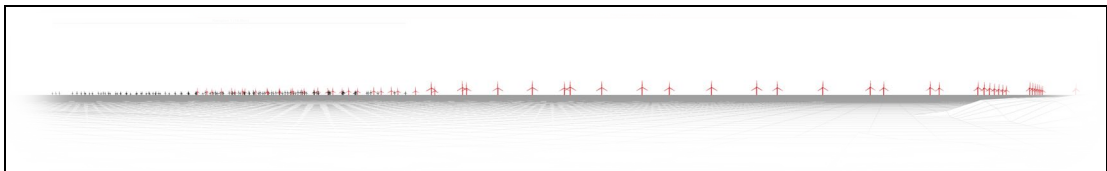
1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 15 September 2023, Richard Allen, Claire Beloe, Richard Morgan, Joe O’Sullivan and Steven Rennie were appointed as the ExA for the application under s61 and s65 of PA2008 [PD-004].

1.3. THE APPLICATION

- 1.3.1. The application for the Rampion 2 Offshore Wind Farm Extension Project was submitted by Rampion Extension Development Limited (the Applicant) to the Planning Inspectorate (the Inspectorate) on 10 August 2023 under s37 of the PA2008 and accepted for Examination under s55 of the PA2008 on 7 September 2023 [PD-001].
- 1.3.2. Chapter 4 of the Environmental Statement (ES) sets out a detailed description of the Proposed Development. In summary, the application seeks the construction of an offshore generating station with a capacity of 1200 megawatts (MW). Comprising:
- The construction of up to 90no. wind turbine generators (WTGs), with up to 3no. offshore substations.
 - The construction of inter-array cabling to connect the WTGs to the offshore substations, and up to 4no. 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 2no. 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.
 - The alterations and extensions of the NGET substation at Bolney.
- 1.3.3. Figure 1 below is a Wireframe example illustration of the extent of the WTGs from a viewpoint in Littlehampton, close to the landfall point at Climping Beach. It shows Rampion 1 Offshore Wind Farm (OWF) in black with the Proposed OWF in red, noting the positioning and height difference between it and Rampion 1 OWF. This image, and other Wireframes and photomontages are taken from Volume 3, Chapter 15 Seascape, Landscape and Visual Impact Assessment (SLVIA) [APP-092].

Figure 1 – Wireframe View of Rampion 1 OWF and the Proposed Development [APP-092]



Change Request

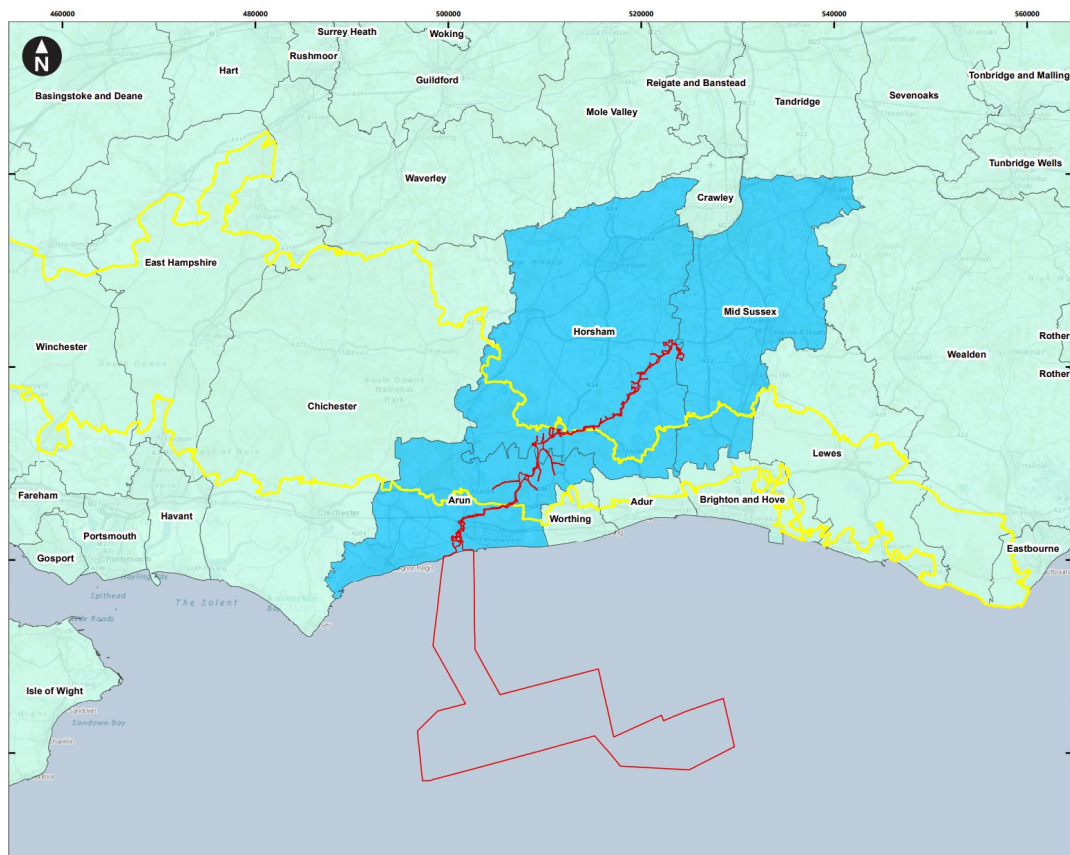
- 1.3.4. On 27 June 2024, the Applicant wrote to the ExA to give notice of its intention to make changes to the application. Eight changes were proposed involving reductions to the Order limits and a reduction in the powers sought over two plots of the Order land.

- 1.3.5. The ExA responded to the Applicant on 8 July 2024 [PD-015]. The ExA agreed with the Applicant that seven of the eight changes proposed (listed as Changes A to G) would amount to a reduction in land take required, and/or a reduction in the use of the land. As this would not likely raise any materially new or different issues to those already before the Examination, the ExA accepted the Applicant's view that those changes would not lead to the Proposed Development being different in nature or substance to that which was originally applied for.
- 1.3.6. For Change H (the eighth change), the ExA considered that the information provided by the Applicant was unclear and the ExA could not advise whether it would raise any materially new or different issues to those already before the Examination without further information and for a number of questions to be answered [PD-015].
- 1.3.7. The Applicant responded on 22 July 2024 [AS-024 to AS-046] to request a formal change to the application and in so doing, sought to address the questions raised by the ExA [PD-015]. On 24 July 2024, the ExA responded to the Applicant [PD-017] accepting all changes (A to H) into the Examination as they were not likely raise any materially new or different issues to those already before the Examination that would not lead to the Proposed Development being different in nature or substance to that which was originally applied for.

1.4. LOCATION OF THE PROPOSED DEVELOPMENT

- 1.4.1. Paragraphs 2.1.2 to 2.1.8 of the Planning Statement [APP-036] provides a brief description of the surrounding area.
- 1.4.2. Figure 2 below indicates the area for the offshore WTGs and the offshore and onshore cabling route, overlayed with the local authority areas. As shown, the majority of the onshore cable route lies within the administrative areas of:
- Arun District Council (Arun DC).
 - Horsham District Council (Horsham DC).
 - West Sussex County Council (West Sussex CC).
- 1.4.3. A relatively small part of the Proposed Development comprising the NGET substation at Bolney and the onshore cable route connecting to it, is located within the Mid Sussex District Council (Mid Sussex DC) administrative area (also within West Sussex CC).
- 1.4.4. The area on Figure 2 below outlined in yellow is the extent of the South Downs National Park (SDNP) to which the proposed cabling route traverses and is administered by the South Downs National Park Authority (SDNPA).

Figure 2 – Route Map and the host Local Authorities [APP-074]



- 1.4.5. The onshore cable route would pass alongside, or within close proximity to a number of Scheduled Ancient Monuments, conservation areas, listed buildings, ancient and other significant areas of woodland. The individual topics in Section 3 of the Recommendation will identify and discuss these further if required.

1.5. **NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS (NSIP)**

- 1.5.1. The Inspectorate agreed with the Applicant's view stated in the Application Form [APP-003] that the Proposed Development is an NSIP for the following reasons: The Proposed Development is a generating station as defined by s14 and s15(2)(a) and (3) of the PA2008 because it wholly lies within England and comprises an offshore generating station with its capacity exceeding 100MW.

- 1.5.2. The Recommended DCO identifies the following as development which falls within the above definition:

- Work No 1 – construction of the OWF of up to 90no. WTGs.
- Work No 2 – the network of subsea cables linking the WTGs and the offshore substation(s).
- Work No 3 – construction (up to 3no.) offshore substations.

- 1.5.3. S115 of the PA2008 provides that, in addition to the development for which development consent is required, consent may also be granted for Associated Development. Associated Development is defined as development which is associated with the principal development. Subsections (2) to (4) of s115 of the PA2008 set out other requirements relating to Associated Development.

- 1.5.4. The Recommended DCO identifies Work No.4 through to Work No.20 as Associated Development, which comprises all other works including onshore cabling and the onshore substation at Oakendene.
- 1.5.5. Schedule 1, Part 2 of the Recommended DCO identifies those elements which the Applicant identifies as Ancillary Works, which comprise:
- Temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development.
 - Marking buoys, beacons, fenders and other navigational warning or ship impact protection works.
 - Temporary works for the benefit or protection of land or structures affected by the authorised development.
- 1.5.6. No IP raised any concerns or issues regarding the identified Associated Development as being unnecessary to implement the Proposed Development. The ExA agrees that the Work Nos.4 to 20 are Associated Development which are necessary to implement Work Nos 1 to 3, without which the Proposed Development cannot function. Thus, they comply with s115 of the PA2008, The ExA is satisfied that the works identified in Schedule 1, Part 2 are ancillary in nature and also necessary to implement the Proposed Development.

1.6. ENVIRONMENTAL IMPACT ASSESSMENT

- 1.6.1. The Proposed Development is development for which an Environmental Impact Assessment (EIA) is required.
- 1.6.2. The Applicant submitted a Scoping Report on 2 July 2020, and the Inspectorate on behalf of the Secretary of State provided a Scoping Opinion on 11 August 2020 [APP-125]. On 9 November 2023 the Applicant provided the Inspectorate with certificates confirming that s56 and s59 of PA2008, and Regulation 16 of the Environmental Impact Assessment Regulations 2017 (EIA Regulations) had been complied with. They were published on the Inspectorate's website on 22 November 2023.
- 1.6.3. Appendix A1 to this Recommendation sets out the documents which comprise the ES. Consideration is given to the adequacy of the ES and matters arising from it in Section 3 of this Report.
- 1.6.4. The ES assessment follows a standard EIA methodology, and where possible, is based on legislation, definitive standards and accepted industry criteria. Its objective is to anticipate the changes or impacts that may occur to the receiving environment as a result of the Proposed Development, and to compare the existing environmental conditions (the baseline) and those that would occur in absence of the Proposed Development (future baseline).
- 1.6.5. The EIA process involved identification of sensitive receptors that may be affected by impacts resulting from the Proposed Development and assesses the extent to which these receptors may experience significant environmental effects as a result. Where significant effects are identified, the ES proposed mitigation measures to avoid, reduce, and offset the significance of the effect, expressed as residual effects after taking account of mitigation.
- 1.6.6. Schedule 16 of the Recommended DCO sets out the documents proposed to be certified in the ES post Examination. The final draft DCO [REP6-007] contains "TBC" against some documents which were updated also at Deadline 6. The ExA

will add these references to the Recommended DCO. The ES is in the ExA's view, sufficient to enable the Secretary of State to take a decision in compliance with the EIA Regulations.

1.7. HABITATS REGULATIONS ASSESSMENT

- 1.7.1. The Proposed Development is development for which a Report to Inform Appropriate Assessment (RIAA) Report was provided at the outset of the application [APP-038] and updated at Deadline 4 [REP5-025] and again at Deadline 6 [REP6-115].
- 1.7.2. Consideration is given to the adequacy of the HRA Report, associated information and evidence and the matters arising from it in Section 4 of this Recommendation.

1.8. COMMITMENTS REGISTER

- 1.8.1. The Commitments Register [REP6-227] is a document listing all Commitments the Applicant has produced. It identifies, in most cases, how each embedded environmental measure would be secured by specific Requirements in the Recommended DCO and Conditions within the Deemed Marine Licence (DML) for the offshore part of the Proposed Development and related application documents as part of the embedded mitigation measures within the ES. Many of the Commitments are also documented within individual ES chapters and are also secured through specific plans such as the Outline Code of Construction Practice (OCoCP) [REP6-224].
- 1.8.2. The Commitments Register is not part of the ES. During the early part of the Examination, the Applicant considered the document to represent an informal list of Commitments which were secured in the individual documents secured by Requirements. However, the ExA considered that the Commitments Register was more heavily relied upon by IPs such that its status should be elevated in the Examination. The Applicant subsequently added it to Schedule 16 and the list of certified documents.
- 1.8.3. During the Examination, in response to a number of concerns from IPs, local planning authorities (LPAs) and the ExA regarding inconsistencies between submission documents, the Applicant added a statement to section 1.2 of the Commitments Register [REP6-227] to state:

“In the event that there is an inconsistency in the commitments in this register and the detail provided in the related Application Documents referenced herein, the least environmentally damaging scenario shall prevail”.
- 1.8.4. The ExA refers to the Commitments Register regularly in Section 3 of this Recommendation.

1.9. PROCEDURAL DECISIONS

- 1.9.1. The ExA made a number of other procedural decisions (PDs) which are recorded in the EL referenced [PD-]. They detail the ExA decisions relating to the procedure of the Examination and did not bear on the ExA consideration of the planning merits of the Proposed Development. Further, they were generally complied with by the Applicant and relevant IPs.

Principal Areas of Disagreement Statements

- 1.9.2. In its letter of 20 September 2023 [PD-005], the ExA requested local authorities, statutory parties and named IPs to prepare and submit Principal Areas of Disagreement Statements (PADS), both alongside their respective Relevant Representations (RRs) but also to be updated at various deadlines during the Examination. This enabled the ExA to have a greater understanding at a much earlier period in the process of the substantive matters of concern with the application. The PADS were used to assist the ExA in its preparation of the Initial Assessment of Principal Issues (IAP) and throughout the Examination and have been taken fully into account by the ExA in all relevant Sections of this Report. The PADS were a live document throughout the Examination, supplementing the Local Impact Reports (LIR), Statement(s) of Common Ground (SoCG) and Written Representations (WRs).
- 1.9.3. The PADS comprises a table of four columns requesting:
- The topic area in question;
 - A brief description of the concern or matter in dispute;
 - What, in the view of the IP, needs to change/ be amended to overcome that concern/ disputed matter; and
 - The likelihood of the matter being resolved.
- 1.9.4. Appendix A2 of this Recommendation sets out the list of PADS received during the Examination.

Land Rights Tracker

- 1.9.5. In the same letter [PD-005] the ExA requested the Applicant maintain and complete a Land Rights Tracker (LRT). Its purpose is to provide a useful reference table for the status of negotiations between the Applicant and Affected Persons (APs) and is intended to make it easier for the ExA and APs to monitor the status of the progress of the Land Rights and to facilitate the Land Rights section in this Recommendation. The final version of the document can be found in the EL [REP6-018] in a PDF format. The Secretary of State may wish for the Applicant to provide them with an up-to-date version when making their decision. The Land Rights section of this Recommendation will set this out in further detail.

Pre-Examination, Mid-Examination, and Final Issues Tracker

- 1.9.6. The ExA requested [PD-005] the Applicant provide at three stages in the process, an Issues Tracker. Firstly, in the Pre-Examination stage once the Applicant had sight of the RRs. Secondly and thirdly, at the mid-point and end of the Examination stage. The ExA wanted the Applicant to summarise what it considered to be the issues of concerns raised from IPs and for the ExA to be satisfied that the Applicant had an adequate grasp of said issues and how it was looking to resolve them, if possible. The aim was also to make it easier for the ExA and IPs to follow the progress of the application and to track where and if issues were being resolved.

1.10. PRE-EXAMINATION

The Persons Involved

- 1.10.1. The persons who became subsequently involved in the Examination were:
- Persons who were entitled to be IPs because they had made a relevant representation (RR) or were a statutory party who requested to become an IP.

- APs who were affected by a CA and/ or TP proposal made as part of the application and objected to it at any stage in the Examination.

Relevant Representations

- 1.10.2. RRs totalling 425 were received by the Inspectorate. All persons who made RRs received a letter under Rule 6 [PD-006] of the Infrastructure Planning (Examination Procedure) Rules 2010 (explaining the opportunity to become involved in the Examination as IPs. All RRs have been fully considered by the ExA. The issues that they raise are considered in the relevant sections of this Recommendation.
- 1.10.3. Appendix A3 of this Recommendation sets out the substantive matters received by RRs. The table does not report all of the RRs received where general and non-specific concerns were raised or those that relate specifically to CA. The ExA nevertheless has read all RRs received and will comment on those relevant where necessary to do so.

The Preliminary Meeting

- 1.10.4. On 14 December 2023, the ExA wrote to all IPs, Statutory Parties and Other Persons under Rule 6 of the EPR inviting them to the Preliminary Meeting (PM) and other Hearings (see below), outlining:
- The arrangements and agenda for the PM.
 - Notification of hearings to be held in the early stage of the Examination.
 - Agendas for the early hearings.
 - An IAPI.
 - The draft Examination Timetable.
 - Availability of Examination documents.
 - The ExA's procedural decisions.
- 1.10.5. The PM took place on 6 February 2024 at the Metropole Hotel, Kings Road, Brighton BN1 2FU. The PM and subsequent Hearings consisted of blended events, meaning they were held in person, with some participants opting to attend online using Microsoft Teams. A recording [EV2-001], a transcript [EV2-002] and a note of the PM [EV2-003] were published on the project page of the National Infrastructure Planning website. The Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [PD-007], dated 7 February 2024.

1.11. THE EXAMINATION

- 1.11.1. The Examination began on 6 February 2024 and concluded on 6 August 2024. The principal components of and events around the Examination are summarised below. No party requested to join or leave the Examination.

Written Representations and Other Examination Documents

- 1.11.2. The Applicant and IPs were provided with opportunities to:
- Make WRs
 - Comment on WRs made by the Applicant and other IPs.
 - Summarise their oral submissions at hearings in writing.
 - Make other written submissions requested or accepted by the ExA.
 - Comment on documents issued for consultation by the ExA including:
 - A Report on Implications for European Sites (RIES) [PD-014] published on Tuesday 18 June 2024; and

- A commentary on the draft Development Consent Order (draft DCO) [PD-013] published on Tuesday 18 June 2024.

1.11.3. All WRs and other Examination documents have been fully considered by the ExA. The issues that they raise are considered in all relevant Sections of this Report.

Local Impact Reports

1.11.4. LIRs were received by the ExA from the following local authorities.

- Arun DC [REP1-039].
- Brighton & Hove City Council (Brighton & Hove CC) [REP1-041].
- Horsham DC [REP1-044].
- Mid Sussex DC [REP1-046].
- SDNPA [REP1-049].
- West Sussex CC [REP1-054].

1.11.5. The ExA will discuss individual areas of concerns, if required, within the topic sections in Section 3 of this Recommendation. If not directly referenced, the ExA informs the Secretary of State that either the local authorities did not discuss those matters in their respective LIRs or were content with the matter at hand.

Statements of Common Ground

1.11.6. By the end of the Examination, the following bodies had concluded and signed SoCGs with the Applicant:

- Arun DC [REP5-090].
- Horsham DC [REP6-245].
- Mid Sussex DC [REP5-092].
- SDNPA [REP6-254].
- West Sussex CC [REP6-255].
- Environment Agency (EA) [REP5-095].
- Historic England (HE) [REP5-096].
- Natural England (NE) [REP5-097].
- National Highways (NH) [REP5-098] [AS-051].
- Shoreham Airport [REP5-099].
- Marine Management Organisation (MMO) [REP6-241].
- Maritime Coastguard Agency (MCA) [REP5-101].
- Trinity House [REP5-102].
- UK Chamber of Shipping [REP6-242].
- Marine Aggregates [REP5-104].
- Sussex Inshore Fisheries & Conservation Authority (Sussex IFCA) [REP6-243].
- NGET [REP6-244].
- AQUIND Ltd [REP6-246].
- National Air Traffic Services (NATS) [REP6-251].

1.11.7. The Applicant stated [REP5-108] that it also hopes to have a signed SoCG between itself and the Civil Aviation Authority (CAA). However, at the close of the Examination, it stated that it had issued a draft to the CAA but that no response had been received.

Written Questions

1.11.8. The ExA asked two rounds of written questions:

- 259no. Written Questions (WQ) [PD-009], dated Wednesday 3 April 2024.

- 124no. Further Written Questions (FWQ) [PD-012] dated Tuesday 18 June 2024.

- 1.11.9. WQs were published at a later date to the publication of the Rule 8 letter. The ExA considered this preferable so as to allow the post hearing notes, LIRs, WRs and the Applicant's responses to be submitted in writing and thus potentially reduce the number of written questions needed to ask. We consider the resulting relatively low number of written questions asked demonstrated that this approach did provide more efficient use of Examination time.
- 1.11.10. Notwithstanding, owing to the absence of NE from the PM and Hearings held between the 6 and 8 February 2024, the ExA asked a number of WQs arising from the Hearings [PD-008] primarily to NE but also to the MMO and Horsham DC.
- 1.11.11. All responses to the ExA WQ have been fully considered and taken into account in all relevant Chapters of this Report.

Unaccompanied Site Inspections

- 1.11.12. The ExA held the following Unaccompanied Site Inspections (USIs):
- USI1 – Wednesday 15 and Thursday 16 November 2023 [EV1-001].
 - USI2 – Tuesday 11, Wednesday 12 and Thursday 13 June 2024 [EV1-002].

Accompanied Site Inspection

- 1.11.13. The ExA held an Accompanied Site Inspection (ASI) on Tuesday 14 May 2024 to visit areas not publicly accessible accompanied by the Applicant and other IPs [EV7-001].
- 1.11.14. The itinerary for the ASI can be found in the EL under the above reference. The ExA has had regard to the information and impressions obtained during its site inspections in all relevant Sections of this Report.

Hearings

- 1.11.15. Issue Specific Hearings (ISHs) were held at the Metropole Hotel, Kings Road, Brighton BN1 2FU on:
- ISH1 - Wednesday 7 and Thursday 8 February 2024.
 - ISH2 – Wednesday 15 and Thursday 16 May 2024.
- 1.11.16. A Compulsory Acquisition Hearing (CAH) was held on Friday 17 May 2024 for the morning period only at the Metropole Hotel, Kings Road, Brighton BN1 2FU. The CAH was then adjourned and resumed on Tuesday 21 May 2024 at the Leonardo Hotel, Kings Road, Brighton BN1 2GS.
- 1.11.17. All APs affected by CA and/ or TP proposals were provided with an opportunity to be heard. We also used these hearings to examine the Applicant's case for CA and/ or TP in the round.
- 1.11.18. Two Open Floor Hearings (OFH1 and OFH2) were held at the Metropole Hotel, Kings Road, Brighton BN1 2FU on the afternoon of Tuesday 6 February 2024 [EV4-001] and in the evening of Monday 13 May 2024. All IPs were provided with an opportunity to be heard on any relevant subject matter that they wished to raise.

- 1.11.19. Owing to the multiple EL references generated for the Hearings primarily as a result of the recordings, the ExA will reference the Applicant's Post Hearing Submissions when referring to each Hearing, as follows:

- ISH1 [REP1-033].
- ISH2 [REP4-072].
- CAH1 [REP4-073].

1.12. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

- 1.12.1. During the Examination, the Applicant entered into discussions with Horsham DC, West Sussex CC and the SDNPA over the request for s106 of the Town and Country Planning Act 1990 (TCPA1990) financial contributions towards local matters including air quality management and landscape improvements. Draft Heats of Terms were submitted at Deadlines 3 and 4 [REP4-075] (West Sussex CC), [REP4-076] (Horsham DC) and [REP4-077] (SDNPA)] setting out the measures sought.

- 1.12.2. However, at Deadline 6, three additional Requirements were added to the final draft DCO [REP6-007] (Requirements 41, 42 and 43) which seek, amongst other things, a mechanism to secure provisions for measures to mitigate the Proposed Development. All three authorities [REP6-238, REP6-239 and REP6-240] expressed support for these measures in their respective Joint Position Statements with the Applicant. Accordingly, s106 Agreements are no longer proposed in this application.

1.13. OTHER CONSENTS AND LICENCES

- 1.13.1. The Consents and Licences Statement [APP-035] identifies in Tables 2-1 and 3-1 7no. offshore consents and 13no. onshore consents that the Applicant may need to obtain in addition to the grant of an Order from the Secretary of State which includes marine licencing. The ExA has considered the available relevant information and, without prejudice to the exercise of discretion by future decision-makers, has concluded that there are no apparent impediments to the implementation of the Proposed Development, should the Secretary of State grant the application.

1.14. OUTSTANDING MATTERS AT THE CLOSE OF THE EXAMINATION

- 1.14.1. For a number of reasons, most notably the Applicant's failure to conclude matters with IPs at a speed with which the ExA and the Secretary of State would expect, there were a number of matters which were either not resolved or where, at the Secretary of State's discretion, updated information may be helpful. These are discussed further in the relevant sections in Sections 3, 4, 6 and 7 of the Recommendation. These are set out further in Section 8 of this Recommendation.

2. DETERMINING THE APPLICATION

2.1. INTRODUCTION

- 2.1.1. This Chapter sets out the key and most relevant legal and policy context for the application. A full list of legislation considered relevant to this application can be found in Appendix A4 to this Recommendation. In this Section, the ExA outlines the legislation and policies we have considered and applied in carrying out the Examination and in making our findings and recommendations to the Secretary of State. Each chapter in the ES contains a section setting out the overarching environmental legislation, policy and guidance for each topic.
- 2.1.2. The LIRs amongst other things set out the Local Authorities' position on applicable development plan policies and other local strategies.

2.2. KEY LEGISLATION

Planning Act 2008

- 2.2.1. The PA2008 provides a different decision-making process for NSIP applications where a relevant National Policy Statement (NPS) has been designated from that where there is no designated NPS. As an NPS for energy has effect in relation to development that is the subject of this application, the ExA considers that the application is to be assessed against s104 of the PA2008.
- 2.2.2. S104(2) of the PA2008 sets out the matters to which the Secretary of State must have regard in deciding an application submitted in accordance with the PA2008. In summary, the matters set out in s104(2) include any relevant NPSs, LIRs, matters prescribed in relation to the development, and any other matters the Secretary of State thinks are both important and relevant to the decision.
- 2.2.3. S104(3) of the PA2008 requires the Secretary of State to decide the application in accordance with any relevant NPS that has effect in relation to this application, subject to the exceptions in subsections 104(4) to (8) as follows:
- Deciding the application in accordance with any relevant NPS would lead to the United Kingdom (UK) being in breach of any of its international obligations.
 - Deciding the application in accordance with any relevant NPS would lead to the Secretary of State being in breach of any duty imposed on her or him by or under any enactment.
 - Deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment.
 - The adverse impact of the Proposed Development would outweigh its benefits.
 - Any condition prescribed for deciding an application otherwise than in accordance with an NPS is met.
- 2.2.4. This Recommendation sets out our findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.
- 2.2.5. Relevant secondary legislation to the PA2008 and which the ExA refers to throughout this Recommendation include:
- Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regulations).
 - The EPR.
 - The EIA Regulations.

Climate Change Act 2008

- 2.2.6. The Climate Change Act 2008 (CCA2008) establishes statutory climate change projections and carbon budgets. A 2019 revision to the Act sets a target of achieving 'net-zero' emissions by 2050. The target in the CCA2008 was substantively amended from 80% of baseline emissions by 2050 to 100% reduction (net zero) emissions by the CCA2008 (2050 Target Amendment) Order 2019. The sixth carbon budget for the next period to 2037 was published on 9 December 2020.

Marine and Coastal Access Act 2009

- 2.2.7. The Marine and Coastal Access Act 2009 (MCAA2009) introduced the production of marine plans and designation of Marine Conservation Zones (MCZs) in UK waters, as well as establishing the MMO. The primary aim of MCZs is to deliver the Government's vision for an 'ecologically coherent network of Marine Protected Areas (MPAs)' across the UK and to ensure the health of the wider UK marine environment. NPS EN-1 states that decision-makers are bound by the duties imposed by sections 125 and 126 of the MCAA2009.
- 2.2.8. Section 125 of MCAA2009 requires all public authorities to exercise their functions in a manner to best further (or, if not possible, least hinder) the conservation objectives of a MCZ. Section 126 also requires them to consider the effect of proposed activities on a MCZ before giving authorisation and imposes restrictions on activities that may have a significant risk of hindering its conservation objectives.
- 2.2.9. Additionally, the Marine Policy Statement 2011 requires decision-makers to take account of how developments will impact on the aim to halt biodiversity loss and the legal obligations relating to all MPAs, including MCZs.
- 2.2.10. Relevant matters are reported throughout this Recommendation.

Equality Act 2010

- 2.2.11. S149 of the Equality Act 2010 (EA2010) establishes a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the Secretary of State in decision-making. We had particular regard to the PSED in terms of holding virtual meetings, producing guidance and holding those meetings, ensuring participants were provided with hard copy correspondence, where requested, and in our conduct of site inspections to ensure full appreciation of the potential impacts of the Proposed Development on persons with protected characteristics.

Human Rights Act 1998

- 2.2.12. The assessment of the planning merits of the Proposed Development and the CA of land can engage various relevant Articles under the Human Rights Act 1998. The ExA has had regard to them together with the implications in respect to CA in section 6 of this Recommendation.

Conservation of Habitats and Species Regulations 2017 (as amended)

- 2.2.13. The Secretary of State is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats

Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

- 2.2.14. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects (LSE) on European sites and hence is subject to a HRA. As is the convention and to inform Secretary of State's decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in Section 4 of this Recommendation.

2.3. NATIONAL POLICY STATEMENTS

- 2.3.1. The NPSs for Energy comprises, for this Proposed Development, the following statements (hereon in referred to as the NPSs 2011):

- EN-1 Overarching National Policy Statement for Energy.
- EN-3 National Policy Statement for Renewable Energy Infrastructure.
- EN-5 Electricity Networks Infrastructure.

- 2.3.2. All three NPSs above have since been replaced by NPS EN-1, EN-3 and EN-5 dated November 2023, and are referred to hereon in as the "NPS EN-1/EN-3/EN-5 2024". However, 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.

- 2.3.3. As this application was submitted before the designation of the NPSs 2024, it therefore falls under the transitional arrangements as outline in paragraphs 1.6.1 to 1.6.3 of the NPS EN-1 2024. Thus, the NPSs 2011 hold primacy upon which the ExA has assessed the Proposed Development against.

- 2.3.4. NPS EN-1 2024, at paragraph 1.6.3, goes on to state that any emerging draft NPSs (or those designated but not yet having effect) are potentially capable of being important and relevant considerations in the decision-making process. The extent to which they are relevant is a matter for the relevant Secretary of State to consider within the framework of the PA2008 and with regard to the specific circumstances of each DCO application.

- 2.3.5. In the Secretary of State's decision for the Sheringham and Dudgeon Offshore Wind Farm Extension Project, made on 17 April 2024, the ExA notes that the Secretary of State placed considerable weight on the 2024 NPSs in reaching their decision. The ExA will therefore follow likewise and will also apply considerable weight to the importance and relevance of the NPSs 2024 in reaching our recommendation.

- 2.3.6. Table A below sets out the list of topic matters within the 2011 and 2024 NPSs. The ExA has considered the NPSs in full in examining the application.

Table A – Comparison of Topic Areas Between NPS EN-1 2011 and 2024

NPS EN-1 2011		NPS EN-1 2024	
Topic Area	Paragraphs	Topic Area	Paragraphs
Air quality	5.2.1 to 5.2.13	Air quality	5.2.1 to 5.2.19
		Greenhouse gas	5.3.1 to 5.3.12
Biodiversity	5.3.1 to 5.3.20	Biodiversity	5.4.1 to 5.4.55

NPS EN-1 2011		NPS EN-1 2024	
Aviation	5.4.1 to 5.4.21	Aviation	5.5.1 to 5.5.60
Coastal change	5.5.1 to 5.5.17	Coastal change	5.6.1 to 5.6.23
Dust, odour etc,	5.6.1 to 5.6.11	Dust, odour etc,	5.7.1 to 5.7.15
Flood risk	5.7.1 to 5.7.25	Flood risk	5.8.1 to 5.8.42
Historic environment	5.8.1 to 5.8.22	Historic environment	5.9.1 to 5.9.36
Landscape and visual	5.9.1 to 5.9.23	Landscape and visual	5.10.1 to 5.10.38
Land use and Green Belt	5.10.1 to 5.10.24	Land use and Green Belt	5.11.1 to 5.11.40
Noise and vibration	5.11.1 to 5.11.13	Noise and vibration	5.12.1 to 5.12.18
Socio-economic	5.12.1 to 5.12.9	Socio-economic	5.13.1 to 5.13.12
Traffic and transport	5.13.1 to 5.13.12	Traffic and transport	5.14.1 to 5.14.21
Waste management	5.14.1 to 5.14.9	Resource and waste mgmt.	5.15.1 to 5.15.19
Water quality	5.15.1 to 5.15.10	Water quality	5.16.1 to 5.16.16

2.3.7. NPS EN-3 2011 deals specifically with renewable energy infrastructure. In particular, section 2.6 concerns offshore wind. This section is largely duplicated in Section 2.8 of NPS EN-3 2024.

2.3.8. The ExA will refer to the above sections of the NPSs within the individual topics in Section 3 of this Recommendation before making a judgement as to whether the topic complies with both.

2.4. OTHER RELEVANT NATIONAL POLICIES

The National Infrastructure Strategy

2.4.1. The National Infrastructure Strategy (NIS) (Nov 2020) sets out the Government's plans to transform the UK's infrastructure networks. It is based around three central objectives:

- Economic recovery.
- Levelling up and strengthening the Union.
- Meeting the UK's net zero emissions target by 2050.

2.4.2. The NIS states that the Government will back new green growth clusters including offshore wind with significant investment, and as part of the Government's decarbonisation agenda, it will build the UK's capability in new green industries with infrastructure investment in offshore wind capacity to reach 40GW by 2030.

The National Planning Policy Framework

2.4.3. The National Planning Policy Framework (NPPF) was adopted in December 2023. The NPPF, and the accompanying Planning Practice Guidance (PPG) set out the Government's planning policies for England and how these are expected to be applied.

2.4.4. Paragraph 5 of the NPPF states that it does not contain specific policies for NSIPs as these are determined in accordance with the decision-making framework set out in the PA2008 and the relevant NPSs, but the NPPF is an important and relevant

consideration on decision making for this application. Paragraphs 7 and 8 state that the Government's approach to achieving sustainable development means that the planning system has three overarching objectives, these being economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.

- 2.4.5. Both the NPPF and the PPG are capable of being important and relevant considerations in decisions on NSIPs, but only to the extent where it is relevant to that Proposed Development.

Net Zero Strategy: Build Back Greener

- 2.4.6. Published in October 2021 and updated in April 2022, the Net Zero Strategy sets out the Government's aims and ambitions to end the UK's contribution to climate change.

British Energy Security Strategy

- 2.4.7. Published in 2022, this plan sets out the UK Governments steps which it is taking to ensure that the UK is more energy independent, secure and resilient. This Plan is complimented by the Powering Up Britain - Net Zero Growth Plan.

Powering Up Britain – Net Zero Growth Plan

- 2.4.8. Published in 2023, this Plan relates to both energy security and net zero, with both described as opportunities for the UK.

2.5. REGIONAL AND LOCAL PLAN POLICIES

- 2.5.1. Chapter 2 of the ES [REP6-141] and the local authority LIRs (see paragraph 1.10.4 above) set out the plans and policies deemed relevant to the Proposed Development. The ExA does not seek to replicate them here. Should a particular policy be raised as contentious, this will be discussed, if required, in the topic matters within Section 3 of this Recommendation.

- 2.5.2. The ExA has taken all regional and local policies into account in our considerations.

2.6. MADE DEVELOPMENT CONSENT ORDERS

- 2.6.1. The Recommended DCO includes wording derived from other made DCOs as explained in the Explanatory Memorandum (EM), the latest version of which was submitted at Deadline 6 [REP6-007]. A list of these Orders is set out in Appendix A5 of this Recommendation.

2.7. TRANSBOUNDARY EFFECTS

- 2.7.1. The Proposed Development is of local and regional impact. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the Secretary of State on 30 April 2021 following the Applicant's request for an EIA Scoping Opinion. No significant effects were identified which could impact on another European Economic Area member state in terms of extent, magnitude, probability, duration, frequency or reversibility.
- 2.7.2. A transboundary re-screening was undertaken on 8 January 2024 shortly prior to the start of the Examination and this also concluded that the Proposed Development

is unlikely to have a significant effect either alone or cumulatively on the environment in a European Economic Area member state.

- 2.7.3. The Regulation 32 duty is an ongoing duty, and on that basis, we have considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the Examination. No mechanisms whereby any conceivable transboundary effects could occur emerged.
- 2.7.4. At Deadline 3, the ExA received a letter from the French Secretariat D'Etat Charge de la Mer [REP3-104] concerning HRA matters. The ExA discusses this further in Section 4 of this Recommendation.

3. ASSESSMENT OF THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This Section sets out our findings and conclusions on the planning issues, structured as follows:

- The need for the Proposed Development and alternatives.
- Assessment of the offshore and intertidal effects.
- Assessment of the onshore effects.
- Assessment of those elements that effects offshore and onshore.

3.1.2. Each topic follows a set structure as follows:

- The Applicant's case, summarising the relevant ES chapter and/or other statements.
- The main issues discussed in the Examination.
- The ExA findings of the Applicant's case against policies and legislation.
- The ExA conclusion including findings on significant effects and the weight to be given to that in the planning balance.

3.1.3. Each topic area will summarise the identified significance of effect (if any) in the respective ES Chapters unless it is necessary to go into further details of the summary of predicted effects and the magnitude of change. The categories of the significance of effects in the ES are broadly as follows:

- Major Adverse (Significant).
- Moderate Adverse (Not Significant).
- Minor Adverse (Not Significant).
- Negligible/Very Low (Not Significant).

3.1.4. The ExA will apportion either positive, neutral or negative weight to the identified significance of effect in the planning balance. The ExA will also use descriptive terms to determine the level of weight to be applied, which will be little, moderate, great or very great.

3.1.5. The ExA does not report on every issue raised by IPs. We instead focus on those matters which were principal concerns for the Examination and specific discussion points of interest. Where the ExA does not discuss a particular concern of an IP, the Secretary of State can be assured the ExA has considered the matter and that we are satisfied with the Applicant's responses given at the appropriate point in the Examination.

3.1.6. Unless it is specifically necessary and relevant to do so, the ExA does not provide a running commentary on why specific documents were updated during the Examination. This is because in most cases, the Applicant provided additional information at the request of the ExA and/or IPs. The ExA will generally refer to a document and its EL reference by its most recent submission into the Examination, save where the ExA is referring to a specific document in time.

3.1.7. At the close of the Examination, there were some where an IP was not able to respond to a submission at Deadline 6. These are discussed further in the relevant sections below. Section 8 provides a summary of the outstanding matters whereby the Secretary of State may wish to seek further information from IPs to assist in their determination of the application.

NEED AND ALTERNATIVES

3.2. THE NEED FOR THE PROPOSED DEVELOPMENT

The Applicant's Case

- 3.2.1. As set out in Chapter 3 (and elsewhere) in the ES [REP6-163], the Applicant explains the formation of the application. The Rampion 1 OWF was developed following The Crown Estate's (TCE) Round 3 offshore wind leasing programme launched in 2008. The Round 3 area within which Rampion 1 was brought forward (Zone 6, in the English Channel) was one of nine Zones identified following a process of national, strategic level planning, and represented a critical component of the UK's response to meeting international and national renewable energy targets and commitments. As part of the wider national strategic initiative, a Strategic Environmental Assessment (SEA) of suitable areas for offshore wind development was conducted by the Government, which completed in 2009. The Secretary of State granted the Order for Rampion 1 in July 2014 and the scheme was completed in April 2018.
- 3.2.2. In 2018, TCE invited the owners of existing Round 3 wind farms to consider potential extensions of those schemes. The Applicant (via a parent company) applied to TCE for an extension through this wind farm extension leasing process. TCE awarded the development rights for Rampion 2 in September 2019. The Applicant has been developing the Proposed Scheme since that period.
- 3.2.3. The Applicant's Planning Statement [REP6-113] sets out the needs case for the Proposed Development.
- 3.2.4. It states that NPS EN-1 2011 notes that it is critical that the UK continues to have secure and reliable supplies of electricity as it makes the transition to a low carbon economy. This means ensuring that:
- There is sufficient capacity (including a greater proportion of low carbon generation) to meet an increasing demand, including a safety margin of spare capacity to accommodate fluctuations in supply or demand.
 - This capacity is reliable enough to meet demand as it arises.
 - Phasing out non-renewable generating sources and replacing with renewable energy sources.
- 3.2.5. The Applicant further stated [REP6-113] that the Government's objectives for energy and climate change will require further diversification of the UK's energy sources and much greater use of renewable and other low carbon forms of generation. Moreover, it states that NPS EN-1 2011 sets out a need for all types of energy infrastructure to achieve energy security, that decision makers should determine applications on the basis that the government has demonstrated that need, and that substantial weight should be given to the contribution that which projects would make to meeting that need. The role of offshore wind in delivering additional renewable energy capacity, and meeting the urgent need, is therefore relevant in this regard.
- 3.2.6. The Applicant also cites NPS EN-3 2011 to support its needs case. NPS EN-3 2011 highlights that Electricity generation from renewable sources of energy is an important element in the Government's development of a low-carbon economy. There are ambitious renewable energy targets in place and a significant increase in

generation from large-scale renewable energy infrastructure is necessary to meet the 15% renewable energy target (Section 3.4 of EN-1 2011). NPS EN-3 2011 recognises that offshore wind farms are expected to make up a significant proportion of the UK's renewable energy generating capacity up to 2020 and towards 2050.

- 3.2.7. During the Pre-Examination period, the suite of NPSs relating to Energy 2011 were withdrawn and replaced by the suite of NPSs relating to Energy 2024. In the Rule 6 letter [PD-006], the ExA requested that the Applicant provide a written statement on the implications of this may have for the Proposed Development.
- 3.2.8. In its response at Deadline 1 [REP1-031], the Applicant stated the following in relation to NPS EN-1 2024:
- The status of the Proposed Development is now confirmed as “critical national priority” (CNP), and paragraph 3.3.63 of NPS EN-1 states that “*the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation.*”
 - Paragraph 3.3.62 states that the Government has concluded that there is a CNP for the provision of nationally significant new offshore wind low carbon infrastructure.
 - Paragraph 3.3.63 also states that “*the Government strongly supports the delivery of CNP Infrastructure and it should be progressed as quickly as possible.*”
 - Paragraph 3.3.65 states that there is an urgent need for new electricity network infrastructure to be brought forward at pace to meet our energy objectives.
- 3.2.9. Section 4.2 of NPS EN-1 2024 concerns the CNP for low carbon infrastructure. In summary, the section states:
- The Government has committed to fully decarbonising the power system by 2035, subject to security of supply, to underpin its 2050 net zero ambitions.
 - The UKs strategy is to increase the supply of low carbon energy and is dependent on the deployment of renewable power generation.
 - CNP exists for nationally significant low carbon infrastructure.
 - Offshore generation of electricity is defined as CNP by paragraph 4.2.5.
- 3.2.10. Paragraph 4.2.6 of NPS EN-1 2024 states that the overarching need case for each type of energy infrastructure and the substantial weight which should be given to this need in assessing applications, as set out in paragraphs 3.2.6 to 3.2.8, is the starting point for all assessments of energy infrastructure applications.
- 3.2.11. Notwithstanding CNP, paragraph 4.2.11 of NPS EN-1 2024 states that the Applicant must:
- Apply the mitigation hierarchy and demonstrate that it has been applied. They should also seek the advice of the appropriate Statutory Nature Conservation Body (SNCB) or other relevant statutory body when undertaking this process. Applicants should demonstrate that all residual impacts are those that cannot be avoided, reduced or mitigated.

- Set out how residual impacts will be compensated for as far as possible. Applicants should also set out how any mitigation or compensation measures will be monitored and reporting agreed to ensure success and that action is taken. Changes to measures may be needed e.g. adaptive management. The cumulative impacts of multiple developments with residual impacts should also be considered.
- Where residual impacts relate to HRA or MCZ sites then the Applicant must provide a derogation case, if required, in the normal way in compliance with the relevant legislation and guidance.

Examination Issues

- 3.2.12. The need for the Proposed Development did not form part of the ExA's IAPI and was not raised as a concern or disputed by any IPs during the Examination.
- 3.2.13. SDNPA's written submission at Deadline 1 [REP1-051] acknowledged that the NPS Energy 2024 are likely to be important and relevant in the decision-making process, and that the NPS EN-1 2024 goes further than NPS EN-1 2011 in suggesting that CNP Infrastructure has an even greater presumption in favour of approval. The SDNPA caveats that with a warning that clear requirements in respect of National Parks and protected landscapes that still carry substantial weight and that conserving protected landscapes is one of the exceptional circumstances where the residual adverse effects should not be outweighed by the need. The ExA discusses the effect of the Proposed Development on the SDNP in the relevant Sections below as well as an assessment on the SDNP taken as a whole in the Inter-Related and Cumulative Effects Section below.
- 3.2.14. A request by two IPs in their RRs [RR-013] and [RR-120] for the suspension of the consideration of the application while the NPS EN-1 2024 was still be finalised was not entertained by the ExA; finding that the Secretary of State would have directed such an approach should they have felt that was the appropriate cause of action. In any event, the draft suite of NPSs relating to Energy from 2023 were before the ExA had, at that point, been full reviewed. Following the submissions of the Applicant's statements on the implications for the Proposed Development at Deadline 1 [REP1-031] and a NPS Tracker document at Deadline 2 [REP2-015], the ExA did not consider it necessary to ask any WQs on this matter and no further discussion took place during the Examination.

ExA Findings and Conclusions

- 3.2.15. NPS EN-1 and EN-3 2011 demonstrate a clear need for the Proposed Development, with particular reference to paragraph 4.1.2 which states that the Secretary of State must start with a presumption in favour of granting consent to applications for energy NSIPs.
- 3.2.16. Subject to the mitigation hierarchy being applied and controlled within the Recommended DCO, which will be discussed below, the ExA is satisfied that the need for the Proposed Development has been emphatically established through the NPS EN-1 and EN-3 2011. The ExA considers the needs case has thus been met.
- 3.2.17. NPS EN-1 and EN-3 2024, which is an important and relevant consideration for the Proposed Development, places a greater emphasis of urgency for the need based upon meeting energy needs and meeting energy security requirements. The identification of offshore wind energy as CNP is the notable difference between the

NPS EN-1 2011 and NPS EN-1 2024. For that reason, the ExA does not consider the Proposed Development would conflict with NPS EN-1 2024.

3.3. ALTERNATIVES

The Applicant's Case

3.3.1. Chapter 3 of the ES [REP6-163] concerns the alternatives that were considered by the Applicant. This chapter should be read alongside the Chapter 3 Alternative Figures [REP6-190]. The Alternatives chapter is split into the following sections:

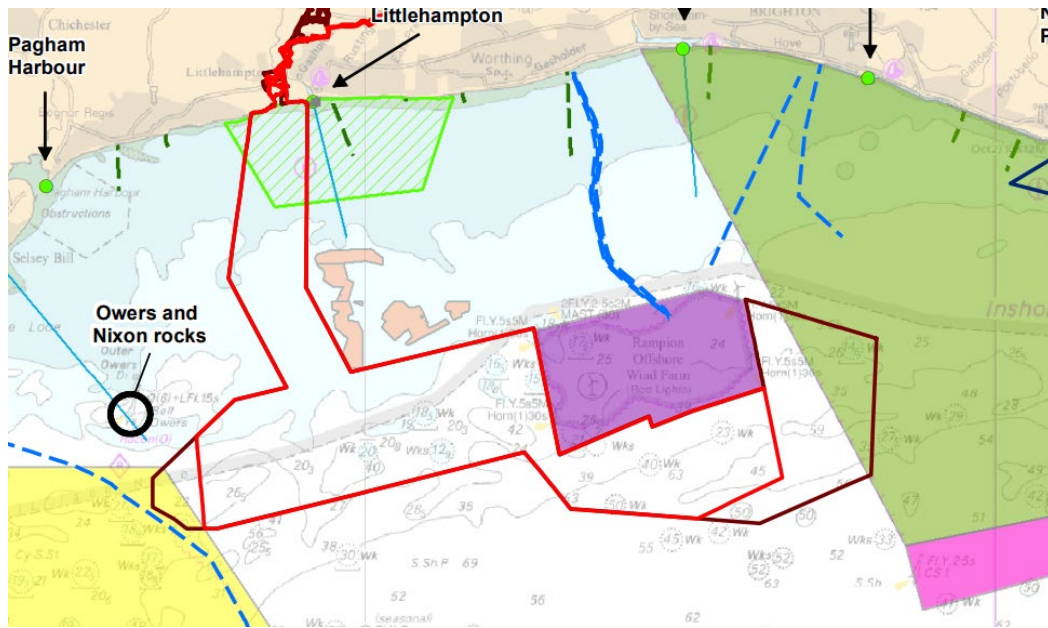
- The offshore array site selection (the start point).
- The NGET connection identification (the end point).
- Landfall and onshore cable route.
- Offshore export cable route.
- Onshore substation identification.
- Connection route between onshore substation and NGET substation at Bolney.

Offshore array site selection

3.3.2. Section 3.2 of the ES [REP6-163] sets out the offshore array site selection process including the offshore substations. As discussed above, the location for the array was pre-determined by the TCE 2018 extension leasing process.

3.3.3. The quantum of WTG and their extent were then primarily determined by the generating capacity need, which the Applicant explains in paragraphs 3.2.14 to 3.2.19 of ES Chapter 3 [REP6-163] would need to be 1200MW. The array then went through a series of design refinement processes to ensure the locations of the WTGs did not prejudice, amongst other things, shipping and navigation, ornithology, fishing, other marine users and its visual appearance in seascape and landscape matters. This resulted in the reduction of the area for the array from its original boundaries to the Order limits as per this Proposed Development. This is shown in Figure 3 below, which is an excerpt from Figure 3.1b to the ES [APP-075]. Here, the original boundary is shown in dark red with the Order limits for the Proposed Development in the lighter red. The purple shaded area is the extent of the Rampion 1 OWF.

Figure 3 - Excerpt showing reduction of Order limits [APP-075]



National Grid substation choice

- 3.3.4. Section 3.3 [REP6-163] then identified the connection point to the NGET substation, the end point. This part of the process is not fully in the control of the Applicant. NGET ultimately determine where the most appropriate connection point should be as part of the Connections Infrastructure Option Notice (CION) process and in this case, ran parallel with the Applicants options appraisal process and focussed on the technical and system capacity for facilitating an efficient new connection to the transmission network and overall consideration of cost to the consumer.
- 3.3.5. As part of the survey process, NGET was asked to identify potential substation locations along transmission lines which largely run in an east/west alignment in the south of England. While many were identified, only three were considered as capable or potentially capable of accommodating the 1200MW to be generated by the Proposed Development. They were:
- The Bolney substation, which is the proposed choice.
 - Fawley.
 - Little Horsted, which is not currently operational but is expected to be by the time the Proposed Development would be completed.
- 3.3.6. Connections to Bolney and Little Horsted would involve a cable route deviating through the SDNP.
- 3.3.7. Fawley was discounted because, in addition to its environmental and shipping and navigation constraints, connecting to it would require four marine export cable circuits being laid over a distance of at least 55km from the most westerly possible extent of the OWF, and such a distance would have a higher risk level of unforeseen seabed issues and general construction risk, when compared the length that would be required to connect to Bolney. The ES [REP6-163] also states that at a total length of 240km within the seabed, connecting to Fawley would entail significant preparation activities and costs for boulder and unexploded ordnance

(UXO) clearance (particularly important in this area due to historic UXO levels in and around Southampton and Portsmouth). Furthermore, connecting to Fawley would have cost an additional £216m rendering the project unviable.

3.3.8. The other principal and potential substation sites, such as Lovedean, Ninfield, Chilling, and Botley Wood were discounted owing to either their environmental constraints (Botley Wood lies within a woodland which means the substation is incapable of being extended), their limitations to accommodate the 1200MW, or not being economically viable. Dungeness was not considered as a potential connection point due to the distance from the array and technical challenges from the ongoing decommissioning of the nuclear power station at this site. The ExA returns to this matter below.

3.3.9. Paragraph 3.4.21 of the ES [REP6-163] states that in respect to Little Horsted, NGET is now expected to commence work to construct this substation in 2024 and is expected to become operational in 2025. Although there is now less uncertainty about Little Horsted substation being constructed than at previous stages in the life cycle of the Proposed Development, it is still not considered a viable alternative grid connection not least pursuing this option would cause considerable delay to the Proposed Development because Little Horsted had not been subjected to detailed assessment for its suitability. Accordingly, Bolney was selected as the preferred substation site as directed by NGET.

Landfall and onshore cable route

3.3.10. Section 3.4 [REP6-163] reports on the landfall and onshore cable route. Whilst the NG substation had already been selected, it is important to set out the other options and routes that were considered. The ES states that six landfall options were considered including the use of Rampion 1's landfall point at Brooklands Park, East Worthing. These are illustrated in Figure 4 below, taken from the ES [APP-075]. Of particular note is the blue line which is the proposed onshore cable route and the black line shows the Rampion 1 OWF onshore cable route and red represents the Climping to Lovedean route. Pink is Tide Mills to Little Horsted.

Figure 4 - Landfall to National Grid substation options [APP-075]

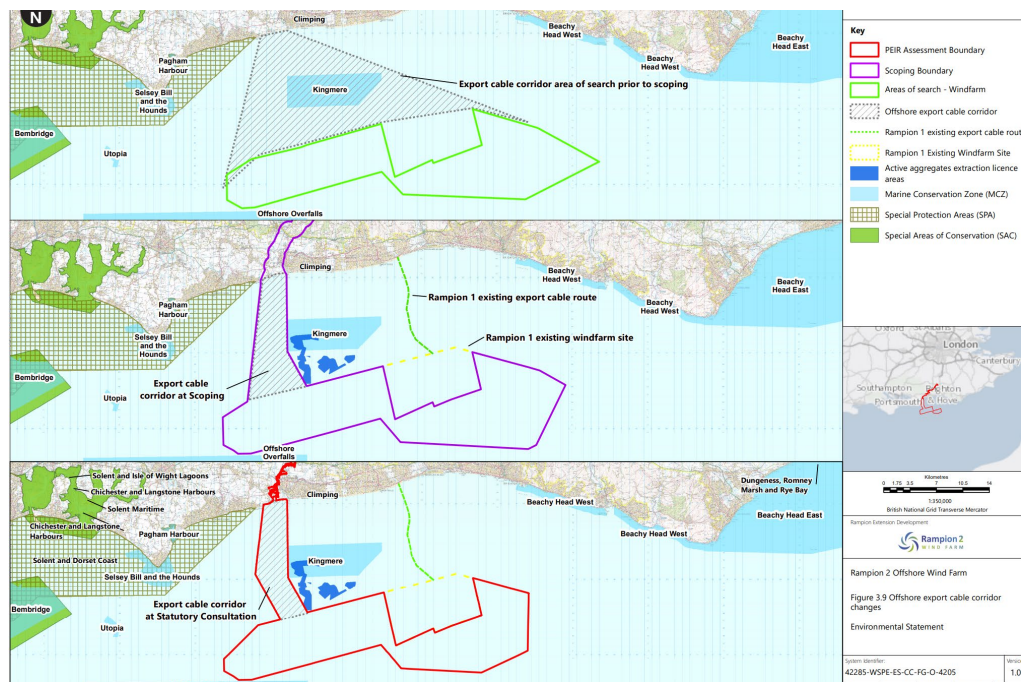


- 3.3.11. Use of the Rampion 1 (shown in black in Figure 4) landfall and cable route was considered not technically feasible owing to land constraints as well as the fact that the additional infrastructure at Brooklands could not be accommodated.
- 3.3.12. The Sussex coastline is heavily developed, in particular the central conurbation extending from Worthing in the west, through Lancing, Shoreham, Portslade, Hove and Brighton in the east. To the east of Brighton, the landform comprises vertical cliffs providing a significant barrier to available landing points until east of Newhaven. This meant that landfall options existed only at Climping beach, or much further to the west at Bracklesham and East Wittering.
- 3.3.13. The Tide Mills landfall point (shown pink on Figure 4) was discounted owing to its distance from the array, but also because of environmental constraints including the loss of a Schedule Ancient Monument and the need for the cable route to pass through a local wildlife site (LWS), priority habitats and flood zone 3 areas. In addition, a landfall point here would need to connect to the currently unbuilt Little Horsted NGET substation and at the time of survey, this was deemed too uncertain.
- 3.3.14. Climping to Lovedean NGET substation was discounted owing to environmental constraints including the need to pass thorough mature woodland but also technical constraints as the Lovedean substation did not have the capacity to accommodate the Proposed Development without it having to be significantly scaled back. For similar reasons, the Church Norton to Lovedean (orange), Bracklesham to Lovedean (yellow) and East Wittering to Lovedean (green) were discounted. That left Climping to Bolney as the preferred landfall and route.
- 3.3.15. Table 3-6 of the ES [REP6-163] sets out the options and appraisal taken to find the onshore cable route to the Bolney NGET substation. We do not seek to summarise all here but that the ES states that the route sought to avoid particular constraints such as woodlands and as such it largely deviates through open land. Further and more details options were considered regarding the route to the environmental features of Michelgrove Park and from there to Sullington Hill, identified in the ES as the Longer Alternative Cable Routes (LACRs). Various options were considered particularly the section between Michelgrove Park and Sullington Hill itself, with two initial choices (known in the ES as LACR-01b and LACR-01c) which aligned west of Harrow Hill and east of Blackpatch Hill, giving way to the proposed route which now aligns between them (LACR-01d). ES Figures 3.6, 3.7 and 3.8 [APP-075] illustrate this in more detail.

Offshore export cable route

- 3.3.16. Section 3.5 [REP6-163] reports on the choices for the offshore cable route linking the array to the landfall at Climping. It states that the route needed to avoid key sensitive features and marine protected areas where possible; and identify the shortest route as a preference for cabling routing to minimise cost and construction timescales as well as electricity transmissions losses. A number of constraints were identified including the extant Rampion 1 cable route, the Kingmere MCZ, extant aggregate extraction licences and the SSSI designation at the eastern part of the landfall at Climping Beach. Figure 5 below, taken from the ES [APP-075] illustrates the wider offshore cable corridor and the Order limits as proposed.

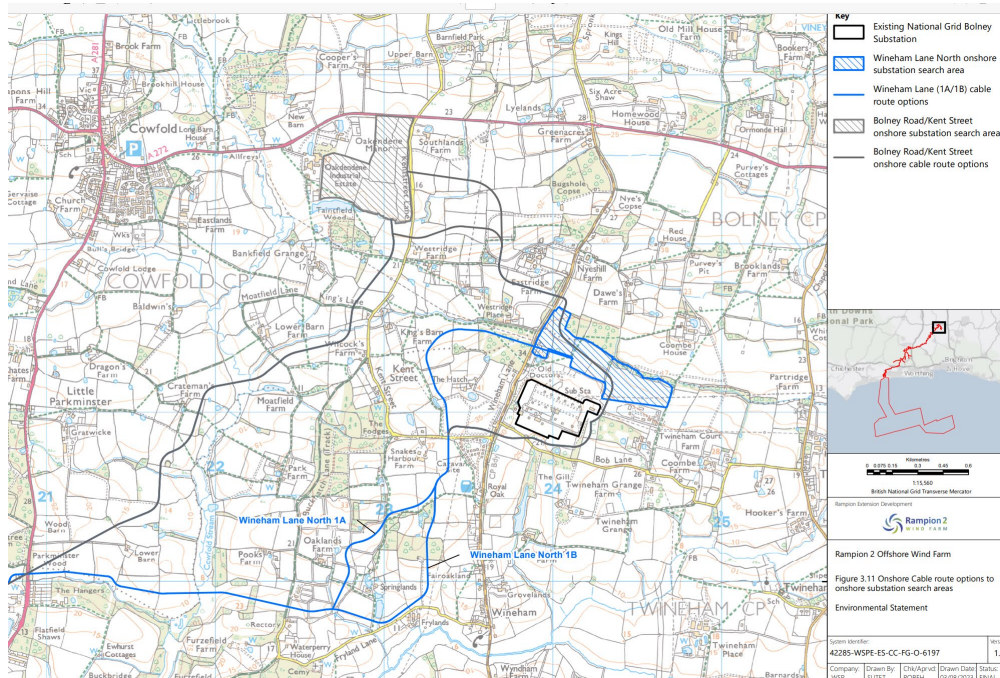
Figure 5 - Offshore cable corridor [APP-075]



Onshore substation

- 3.3.17. Section 3.6 [REP6-163] looks at the alternatives for the new onshore substation. With the NGET substation at Bolney having been selected (see above), paragraph 3.6.1 states that the onshore substation needed to be located within proximity to it, up to circa 5km distance.
- 3.3.18. Seven sites were initially selected. Those at Frylands, Snake Harbour, and Eight Acres Shaw discounted over their insufficient size to accommodate the onshore substation and their inability to be extended in size. After a further stage, Star Lane site was discounted owing to its location within a flood zone 3 area and taken with other environmental constraints, the developable area was deemed too small. Wineham Lane South, which lies immediately adjacent to the existing NGET Bolney substation, was also discounted owing to environmental constraints and its proximity to Ancient Woodland, listed buildings as well as an extant planning consent for part of the site to be developed for commercial use. These sites can be viewed on Figure 3.10a to the ES [APP-075].
- 3.3.19. Two sites were therefore shortlisted. Wineham Lane North, which lies immediately to the north of the NGET Bolney substation, and the proposed substation site at Oakendene. This can be seen in Figure 6 below.

Figure 6 - Shortlisted two sites for the onshore substation and potential cable routes [APP-075]



3.3.20.

Paragraphs 3.6.18 to 3.6.25 of the ES [REP6-163] discuss in greater detail the constraints and benefits of both Wineham Land North and Oakendene, and how the latter was preferred:

- Oakendene has better accessibility, being directly served from the A272, and is a larger site, which allows for greater flexibility to adjust siting within the substation area in response to any new constraints that are identified.
- With the NGET Bolney substation and Rampion 1 onshore substation in close proximity, there was concern a third substation in this location could likely to lead to the need for extensive mitigation including restrictions on layout, requirements for screening affecting availability of space and stringent restrictions on plant choice in relation to sound power levels.
- Physical space availability at the Wineham Lane North site which would restrict the development of mitigation strategies including those for landscape and drainage.
- The Wineham Lane North site would entail greater construction risks in terms of necessity to work at height due to topography, and the area is more constrained by existing utilities with an increased risk of cable strikes due to the proximity to the substation. However, there is a potentially elevated risk of pollution spill to watercourses at Oakendene due to more extensive ditch network crossing the work area. On balance, there is a marginal preference for the Oakendene site.

3.3.21.

Paragraph 3.6.25 [REP6-163] states that the Oakendene site was preferred in terms of engineering and land interests. While both sites have residual environmental constraints, the combination of physical engineering space constraints and the residual risks associated with these led to a marginal preference for Oakendene.

- 3.3.22. The Secretary of State should be aware that the central part of the discounted Wineham Lane North site is now planned for a grid stability infrastructure project; to which Mid Sussex DC has recently given its Scoping Opinion response on 16 July 2024 (application reference DM/24/1595). Just to the north east of the Wineham Lane North site and adjacent to Coombe House is the subject of a planning application (application reference DM/23/0769) for a battery energy storage system.
- 3.3.23. On land approximately 500m south of the Bolney NGET Substation site, Mid Sussex DC has on 5 June 2024 granted a resolution to approve a large battery storage facility (application reference DM/21/2276). On 23 July 2024, the Secretary of State wrote to Mid Sussex DC stating that they would not be calling the application in for their own determination, paving the way for the local authority to formally approve it. The above thus adds further justification for the choice of the Oakendene site for the onshore substation.

Connection to National Grid substation

- 3.3.24. Section 3.7 of the ES [REP6-163] examines the choices of the cable route between the onshore substation at Oakendene and the NGET substation at Bolney. Two routes from the Oakendene site were considered, known as 1C and 1D, which are visible on Figure 6 above. Option 1C was discounted because it was not considered to be technically feasible due to extremely limited space for the entry and exit point of cables.

Other matters

- 3.3.25. Chapter 3 of the ES [REP6-163] also reports on the alternative works necessary at the Bolney NG substation, and particularly whether to use air insulated switchgear or gas insulated switchgear. This will be subject to final design and consultation with NG. The ES also considers alternative construction techniques in Section 3.9 including for the wind turbine generator foundations, the type of export cables, construction techniques for the landfall and for the onshore cable route.

Examination Issues

- 3.3.26. The main issues for the Examination were:
- Whether suitable alternatives for the onshore substation had been adequately assessed at Fawley and Dungeness, which could accommodate the Proposed Development's generating capacity but avoid a cable route through the SDNP.
 - Whether the Oakendene site for the onshore substation is environmentally inferior to the alternative at Wineham Lane North.
- 3.3.27. Matters concerning the minerals safeguarding and whether adequate alternatives were sought on land within the Wiston Estate are discussed in the minerals section below. However, the ExA is satisfied that this has been adequately reasoned.
- 3.3.28. The consideration of alternatives was a main issue in the Examination for many IPs. In particular, the SDNPA raised in its LIR [REP1-049] and at ISH1 [REP1-033] that the Applicant's principal duty was to avoid works through the SDNP; something it felt had not been adequately demonstrated. The ExA initially concurred that the ES [REP6-163] was not particularly clear on this matter.
- 3.3.29. Notwithstanding, the ExA noted that many of considered and discounted NGET substations in the ES would not be able to accommodate the generating capacity

from the Proposed Development. The ExA considered that these sites did not warrant further questioning. The ExA did, however, wish to explore further the two possible locations that a) avoided the SDNP and b) could accommodate the generating capacity, those being Fawley and Dungeness.

- 3.3.30. In respect to the choice for the substation at Oakendene, the ExA did not question further those initial sites that were discounted (such as Snake Harbour et.al.) as we considered sufficient explanation had been made in the ES and the constraints of those sites were clear [REP6-163 and APP-075]. That said, the Secretary of State should be aware that CowfoldvRampion's (CvR) WR [REP1-089] disputes many of the initial sites that were discounted; these are set out in section 3 of its submission. The discounting of the Wineham Lane North site; considered the only real alternative to Oakendene by the Applicant, was perhaps less clear and was of concern to many IPs including CvR [REP1-087 et.al.]. Thus, this matter also became a main discussion point in the Examination.

Fawley and Dungeness

- 3.3.31. At the ISH1 [REP1-033], the ExA asked a number of questions of the Applicant on specific reasons as to why the Fawley and Dungeness NGET substations were discounted. The basis for the questioning was that the ExA considered that the ES [REP6-163] seemed to place more importance on the additional financial costs to the Proposed Development connecting to Fawley would entail, and that the specified environmental and technical constraints were not explained in sufficient detail. With both NGET substations located close to the coast, an offshore cable connection to these substations, with the Applicant's substation built alongside would avoid a lengthy onshore cable route and important, avoid the SDNP altogether.
- 3.3.32. The Applicant did not provide satisfactorily fulfilling answers and as such, the ExA requested written submissions on the environmental and technical constraints that hindered the connection to Fawley and Dungeness. This was submitted at Deadline 1 [REP1-019].

Legend:

- Potential onshore substation search area
- Special areas of conservation
- Special protection areas
- Sites of special scientific interest
- National park
- National Grid connection

Scale: 0 - 1000m

Inset Map: Shows the location of the study area relative to London and Southampton.

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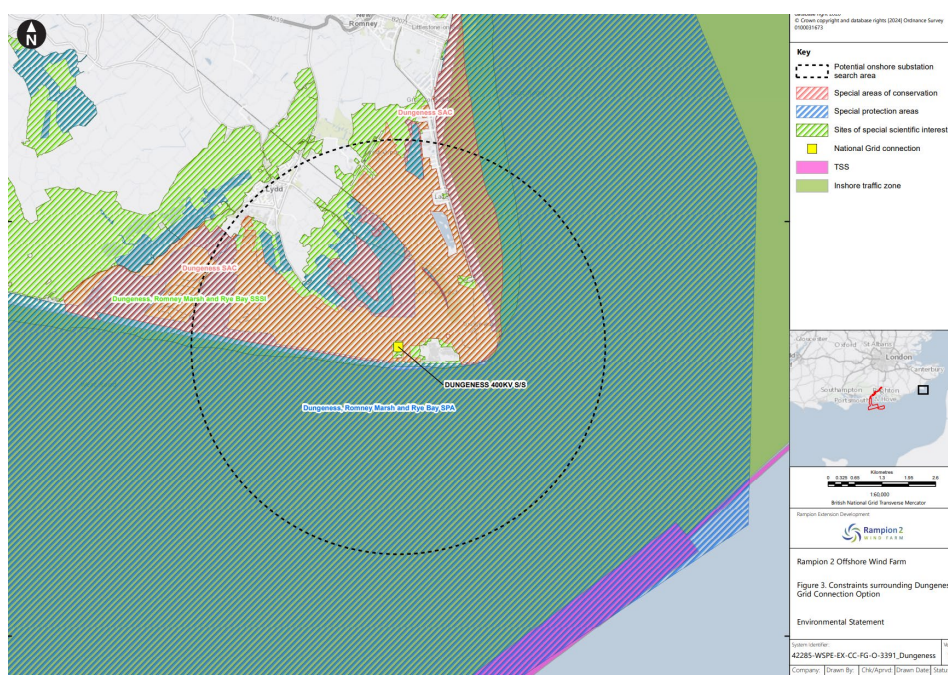
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Revision Number: 42285-WSP-E-EX-CC-FG-O-3391_Fawley
Company: CH2M Hill
Drawn By: CH2M Hill
Checked By: CH2M Hill
Date: 14/06/2024

- Rampion 2 Offshore Wind Farm Extension Project
REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November
2024

- 3.3.36. The Fawley site is stated as being located within the New Forest National Park. To make landfall, the Applicant stated [REP1-019] that it is likely that Horizontal Directional Drilling (HDD) would need to be launched from a site within the National Park (NP) to the south of the Fawley Substation and would exit within the Solent and Southampton Water SPA. Construction of a new substation site would further likely require the clearance of some woodland types on the Priority Habitats Inventory within the NP.
- 3.3.37. Turning to Dungeness, this site was not specifically assessed in the ES [REP6-163], hence the ExA's request for further evidence. In its response [REP1-019], the Applicant stated that, notwithstanding the 102km of cable length needed to access the site which would be considerably more than that needed to landfall and Climping Beach, construction activities would interfere with the ongoing nuclear defueling and decommissioning project associated with the Dungeness Nuclear Power Station which would be extremely complex. There is also an active Ministry of Defence (MoD) firing range to sea located immediately to the west of the grid connection option, and working in an area of an active firing range raises health and safety concerns for both construction and operations. The area also has additional issues with potential UXO.

Figure 8 - Constraints of the Dungeness National Grid Substation [REP1-019]



- 3.3.38. The environmental effects are also reported as challenging. The Applicant stated [REP1-019] that Dungeness is designated at the international level as part of the Dungeness SAC, which similarly supports a range of sensitive habitats. This area has the following designations:
- Dungeness SAC.
 - Dungeness, Romney Marsh and Rye Bay SPA/SSSI.
 - Dungeness, Romney Marsh and Rye Bay Ramsar.
- 3.3.39. The area also contains priority habitat including the presence of a range of breeding and non-breeding birds including waders, wildfowl and seabirds. An overarching Ramsar designation also captures a range of red data book invertebrates and plants

and water vole. Construction of a substation would almost certainly be within the SAC/SPA area.

- 3.3.40. The Applicant further stated [REP1-019] that there is also a complex coastal erosion and sea defence maintenance regime at this location. The area is underlain by shingle which is moving slowly north and east as the sea moves the shingle from one side of the headland to the other and sea defences are continually maintained.
- 3.3.41. In ExA WQs [PD-009], the ExA asked for responses to the Applicant's technical and environmental constraints to Fawley and Dungeness from NE and the EA (AL 1.1).
- 3.3.42. In its response [REP3-086], NE stated that when selecting a cable route, NE would advise in the first instance that any route looked to avoid designated sites and designated landscapes. NE advised that in respect to both Fawley and Dungeness, there would be the potential for cable installation impacts on designated sites in relation to a grid connection and that there would be potential direct and indirect impacts on the features of these sites from the construction and operation activities from the Proposed Development. Moreover, and in respect to Dungeness, NE stated that the significantly longer cable routes have the potential to impact on benthic habitats protected under Section 41 of the Natural Environment and Rural Communities Act 2006 (NERC2006) and Annex 1 habitats over a much larger area. Both NE and the EA [REP3-148] summarised by acknowledging the environmental challenges of Fawley and Dungeness.
- 3.3.43. On a related matter, Arun DC in its LIR [REP1-039], cited concerns as to whether the Applicant had adequately explained the avoidance of the Climping Beach SSSI as its landfall point, which it maintained by the close of the Examination. Prior to its submission, the ExA asked a number of questions on the effect of the Proposed Development on the Climping Beach SSSI including avoidance measures at the ISH1 [REP1-033].
- 3.3.44. In its response at Deadline 1 to an Action Point request at the ISH1 [REP1-025] and at Deadline 2 [REP2-021], the Applicant stated that it has undertaken a full appraisal of the landfall options in the ES [APP-044] including options to the east of the site (Brooklands and Tide Mills) which has fewer designations, but that they were not feasible owing primarily to complications with Rampion 1 and the uncertainty over the Little Horsted NGET substation delivery. Thus, Climping Beach represented the only viable option. The Applicant further stated that as originally planned, the SSSI would have been avoided. However, following pre-application discussions with the EA, an alternative location within the Climping Beach area was identified for the landfall to better protect the coastal erosion and this required part of the route entering the SSSI. The Applicant proposes to HDD this area entirely.
- 3.3.45. Following this process, the ExA were satisfied that we had obtained the information needed on these substation alternatives to make our recommendation.

Oakendene onshore substation

- 3.3.46. IPs, including CvR [REP1-089] considered the choice for the onshore substation to be a poor one, and both it and Horsham DC [REP1-046] and West Sussex CC [REP1-054] cite the lack of adequate evidence and explanation given in the ES [APP-044] by the Applicant for the discounting of the Wineham Lane North option. Moreover, the residents group claims that such a decision was made at a very late

stage in the Pre-application stage; just a few months before submission; and that the residents and others were not properly notified or engaged with on the change.

- 3.3.47. In its WR [REP1-089], CvR lists a comparison between the Oakendene and Wineham Lane North substation sites which it says demonstrates the latter as the preferable site in environmental and technical terms. The ExA does not list all here, but highlights some of the following:
- Extensive new access needed at Oakendene with loss of hedges and veteran trees, whereas Wineham Lane North already as a two-lane road with visibility access.
 - Oakendene site has a higher level of biodiversity; it is adjacent to a lake and the Cowfold Stream is nearby, whereas Wineham Lane North is less biodiverse; is already mapped out and has no trees or hedges in the centre of the site.
 - Damage to heritage assets including the untouched landscape of Kent Street, Moatfield Lane and the flood meadows, whereas such assets have already been destroyed by the 1960s substation at Wineham Lane North.
 - Significant traffic effects caused by the proposed substation and the unsuitability of Kent Street as a means of access whereas Wineham Lane has less obstructions.
 - Greater flood risk and landscape effects at Oakendene; and would affect the air quality management area (AQMA) at Cowfold.
- 3.3.48. The individual effects of the proposed substation will be addressed in the relevant topic sections below. In respect to alternatives, the ExA wanted to establish whether cumulatively, Wineham Lane North represented a better environmental site than Oakendene, and we tabled the item for discussion at ISH1 [REP1-033]. The ExA also requested a fuller written explanation for the discounting of Wineham Lane North and the Applicant provided this as part of an Action Point response at Deadline 1 [REP1-021] and its oral summary of ISH1 [REP1-033].
- 3.3.49. In both, the Applicant expanded on the ES [REP6-163] by stating that the initial search for a substation site needed to exceed nine hectares (Ha), and while the Wineham Lane North site measures approximately 15.8 Ha compared with 21 Ha for Oakendene, the shape of the area was confined and narrowed with the application of a 25 metre (m) stand-off from Ancient Woodland. The resulting space presented significant challenges for site access and associated construction and operation and maintenance logistics. The Applicant further identified [REP1-021] potential health and safety to the NGET overhead line tower; access issues and earthworks to level the site as further technical constraints of Wineham Lane North. The Applicant also noted that reliance on CA powers for Wineham Lane North would have been required due to the difficulties on assembling the land, whereas Oakendene land is within one land ownership and where negotiations have been positive.
- 3.3.50. In respect to environmental matters, the Applicant stated [REP1-021] that there was no material difference in the LSE between the Wineham Lane North site and Oakendene in respect to terrestrial ecology. CvR [REP2-048] disputed this and continued to throughout the Examination to state that the Oakendene site was especially sensitive (as will be discussed in the ecology section below).
- 3.3.51. The Applicant accepted the identified potential for significant effects to Oakendene Manor, a Grade II Listed Building, can be reduced through mitigation (which is discussed further in the Heritage section below). Access was in fact preferable at

Oakendene due to the requirement to cross multiple adjacent private accesses at Wineham Lane North, affecting the amenity of the adjacent residential properties plus the need for traffic management on the route due to pinch points for heavy goods vehicles (HGVs) which is avoided with the access off the A272 for Oakendene. The Applicant, however, acknowledges in its Flood Risk Assessment [REP4-039] that while both the Oakendene and Wineham Lane North sites lie within Flood Zone 1, the Oakendene site is at a marginally higher surface water flood risk.

3.3.52. In summary, the Applicant stated [REP1-021] that the decision was taken to discount Wineham Lane North on the basis of the three main factors (technical, environmental and landowner engagement) when considered holistically and in order to deliver the planned project. The Applicant highlighted that the Proposed Development enjoys policy support via the NPS EN-1 and NPS EN-3 2011 and considers that these benefits and need for renewable energy outweigh the adverse effects identified in the ES of the Proposed Development as a whole including those related to the onshore substation site at Oakendene. The Applicant had no further substantive matters to add in its Deadline 2 response [REP2-030] to CvR's WR on this matter.

3.3.53. In subsequent written submissions [REP2-048, REP3-099], CvR maintained its concerns with the selections process and disputed the Applicant's assertion that the Oakendene site was preferable. The ExA, while noting these and others continued concerns, had no further questions to ask during the Examination on this matter.

ExA's Findings

3.3.54. Section 4.4 of NPS EN-1 2011 discusses alternatives. Overall, it states applicants need to present the main alternatives considered as part of the Proposed Development and to demonstrate consideration of environmental, social and economic effects including, where relevant, technical and commercial feasibility. The Secretary of State should be guided by principles when deciding what weight to apportion to alternatives. These include:

- The consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner.
- A consideration of alternatives only if there is a realistic prospect of the alternative delivering the same infrastructure capacity in the same timescale and the Proposed Development.
- Alternatives not among the main alternatives studies by the Applicant should only be considered if they are important and relevant to the decision.
- Alternative proposals which mean the necessary development could not proceed, for example because the alternative proposals are not commercially viable or alternative proposals for sites would not be physically suitable, can be excluded on the grounds that they are not important and relevant.
- Proposals which are vague and inchoate can be excluded on the grounds they are not important and relevant.
- Where an alternative is first put forward by a third party after an application has been made, the Secretary of State may place the onus on the person proposing the alternative to provide the evidence for its suitability and should not necessarily expect the applicant to have assessed it.

3.3.55. Section 4.3 of NPS EN-1 2024, entitled Environmental Effects/Considerations covers alternatives. NPS EN-1 2024 states that the applicant must provide information proportionate to the scale of the project, ensuring the information is

sufficient to meet the requirements of the EIA Regulations. Applicants are obliged to include in their ES, information about the reasonable alternatives they have studied. This should include an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility.

- 3.3.56. In determining applications, NPS EN-1 2024 states that the Secretary of State should be guided by the principles as per the bullet points above (which are set out in paragraphs rather than a bullet list), and that only alternatives that can meet the objectives of the proposed development need to be considered. The Secretary of State should not refuse an application for development simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site.
- 3.3.57. In determining alternative NGET substation points, the ExA accepted that there was little merit in pursuing an examination of those sites which were incapable of accommodating the generating capacity. The two sites that were, Fawley and Dungeness, clearly have significant constraints attached to them, confirmed by NE. While both sites would have avoided the need for an onshore cable route and transgressing through the SDNP, the ExA is satisfied that they would likely have led to significantly worse environmental effects than the Proposed Development. With the Bolney substation identified as the appropriate connection point by NGET during the CION process, the ExA accepts the crossing the SDNP is unavoidable in order to connect to the Proposed Development to the NGET substation.
- 3.3.58. The ExA is satisfied that the Applicant has explored all possible landfall options; and that Climping Beach represents the most appropriate location as the closest to the offshore array, and thus limiting the offshore cable length, and that Climping Beach is the only substantive undeveloped section of the coast in this vicinity on the south coast.
- 3.3.59. The ExA notes the qualities of the Oakendene site and the considerable level of vegetation within and on the site's boundaries, together with the proximity to the site of the Cowfold Stream. The ExA also notes the Applicant's assertion that Oakendene is at a slightly higher risk of flooding, and that the ES has identified potential significant adverse effects on the significance of Oakendene Manor.
- 3.3.60. However, Wineham Lane North is, according to the Applicant [REP6-163 and REP1-021] not without its own environmental constraints. The Applicant stated that Wineham lane North may have archaeological significance owing to the presence of late Iron Age/Roman field system and associated pits (assessed as low to medium heritage significance), remains of medieval field systems (assessed as low heritage significance), and residual Bronze Age pottery (assessed as low heritage significance). Wineham Lane North also within close proximity to an Ancient Woodland.
- 3.3.61. The ExA considers that environmental matters have to be taken in the wider context. The Applicant has advanced a strong case that Wineham Lane North is a technically more difficult site for the substation owing to its size, configurations and access. The ExA accepts the Applicant's case on the relative ease of Oakendene being acquired for land rights over Wineham Lane North. Additionally, the ExA shares the concerns raised by Bolney PC at ISH1 [REP1-033] that the proposed substation at Wineham Lane North could potentially have a negative cumulative environmental effect on the immediate local area as it would be within close

proximity to the Rampion 1 substation, the Bolney NGET substation and the proposed Bolney battery storage facility and thus result in four large infrastructure facilities within very close proximity to one another.

- 3.3.62. Therefore, taking all matters into consideration, the ExA considers that the Applicant has appropriately assessed all reasonable alternatives for the location of the onshore substation, and that its decision to locate the proposed substation at Oakendene site is, on balance, appropriate and sound.
- 3.3.63. The ExA notes all other discussions regarding the onshore cable route choices, including Horsham DC's [REP1-044] concerns over the location and justification of the construction compounds. However, the ExA was satisfied with the responses given by the Applicant during the Examination that it did not need to substantially question the matter further.
- 3.3.64. The ExA accepts that the alternative sites have been adequately assessed are not at this point, an acceptance that the environmental effects of the proposed substation are acceptable. These will be discussed in the individual topic sections below and an assessment will be made as to whether any identified harm can be adequately mitigated in the Recommended DCO. This will include West Sussex CC's concerns raised in its LIR [REP1-054] regarding the precise magnitude of harm to Oakendene Manor which it says cannot currently be assessed and that insufficient consideration has been afforded to the historic environment in consideration of substation location alternatives. SDNPA's maintained concerns over the effect of the proposed array on the special qualities of the NP, and the effect caused by the construction activities from the onshore cable route are also discussed in the relevant sections below.

Conclusions

- 3.3.65. Taking these matters into consideration, the ExA is satisfied that the alternative options for the Proposed Development have been rigorously tested by the Applicant. The ExA concludes that the Applicant has considered all reasonable alternatives to each element of the Proposed Development in the ES [REP6-163], and that the scheme represents the most appropriate location having regard to environmental and technical constraints of the proposed and other sites considered.
- 3.3.66. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.3.67. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to alternatives and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

OFFSHORE AND INTERTIDAL EFFECTS

3.4. OFFSHORE AND INTERTIDAL ORNITHOLOGY

The Applicant's Case

- 3.4.1. This section looks at the effects of the Proposed Development both alone and cumulatively, on offshore and intertidal ornithology. The potential impact on offshore and intertidal ornithological features of European Sites, are considered in detail in Section 4 of this Recommendation relating to the HRA.
- 3.4.2. The Applicant's assessment of offshore and intertidal ornithology is set out in the ES – Volume 2, Chapter 12: Offshore and intertidal ornithology [APP-053] updated at Deadline 6 to Revision B [REP6-125]. This chapter has the following appendices:
- Appendix 12.1: Offshore and intertidal ornithology baseline technical report, Volume 4 of the ES [APP-150].
 - Appendix 12.2: Offshore ornithology displacement, Volume 4 of the ES [APP-151].
 - Appendix 12.3: Offshore ornithology collision risk, Volume 4 of the ES [APP-152].
 - Appendix 12.4: Offshore ornithology migratory collision risk modelling, Volume 4, of the ES [APP-153].
 - Appendix 12.5: Offshore ornithology population viability analysis, Volume 4 of the [ES APP-154].
 - Appendix 12.6 Great black-backed gull (GBBG) cumulative assessment and Population Viability Analysis (PVA), Volume 4, of the ES [REP6-193].
- 3.4.3. The ES Chapter 12 was split into sections broadly in the following areas:
- Scope of the assessment.
 - Methodology and baseline data gathering.
 - Baseline conditions.
 - Basis for the ES assessment including maximum design scenarios (MDS) and embedded environmental measures.
 - Methodology for the ES assessment.
 - Assessment of effects including cumulative, inter-related and transboundary effects.
 - Summary of residual effects.
- 3.4.4. The desk-based data sources used to inform the offshore ornithology assessment are summarised in Table 12-11 of Chapter 12 of the ES, Offshore and intertidal ornithology [REP6-125]. Data was collected during 24 site-specific aerial digital surveys of the Proposed Development array area plus the 4km buffer carried out between 2019 and 2021, as detailed in Appendix 12.1: Baseline technical report of the ES [APP-150]. A summary of the sources for site surveys is given in Table 12-12 [REP6-125] and full details of the intertidal baseline conditions are presented in Appendix 12.1 of the ES [APP-150]. The ES [REP6-125] documents that the programme of site-specific winter surveys carried out over the 2020/21 winter period are the most recent and most relevant data, having been carried out with the sole intention of recording baseline conditions. As such, the Applicant's baseline section focuses on the findings of those surveys, supplemented with relevant information from the desk study.

- 3.4.5. Table 12-13 [REP6-125] lists the bird species recorded during the intertidal surveys and Table 12-14 [REP6-125] presents the bird species recorded in site-specific digital aerial surveys of the Proposed Development area.
- 3.4.6. The Applicant outlines the maximum parameters and assessment assumptions for impacts on offshore and intertidal ornithology in Table 12-19 of [REP6-125]. The assessment approach follows the conceptual source-pathway-receptor model. This model identifies any likely environmental impacts on ornithology receptors resulting from the proposed construction, operation and decommissioning of the PD's offshore and intertidal infrastructure.
- 3.4.7. Some key embedded environmental mitigation measures relevant to offshore and intertidal ornithology include those below, see Table 12-20 of [REP6-125] and the Commitments Register [REP6-227] for the full list of relevant commitments:
- C-4 states that the HDD technique will be used at the landfall location;
 - C-43 states the subsea export cable ducts will be drilled underneath the beach using HDD techniques;
 - C-89 states there would be a minimum blade tip clearance of at least 22m above Mean High Water Springs (MHWS), to reduce collision risk; and
 - C-94 states marking and lighting the Proposed Development offshore would be undertaken in accordance with relevant industry guidance and as advised by relevant stakeholders, in line with C-49, C-62, C-110 and C-266.
- 3.4.8. During the construction phase the impacts identified were:
- Disturbance and displacement: Intertidal cable corridor.
 - Disturbance and displacement: Offshore cable corridor.
 - Disturbance and displacement: Array area.
 - Indirect effects: Offshore cable corridor.
 - Indirect effects: Array area.
- 3.4.9. During the operation and maintenance phase the impacts identified were:
- Disturbance and displacement: Array area.
 - Collision risk: Array area.
 - Collision risk: migratory seabirds and non-seabirds.
 - Barrier effect: Array area.
 - Indirect effects: Array area.
 - Combined effects.
- 3.4.10. During the decommissioning phase the impacts identified were:
- Disturbance and displacement: Array.
 - Disturbance and displacement: Offshore Cable Corridor.
 - Indirect effects: Offshore Cable Corridor.
- 3.4.11. The projects considered within the cumulative effect assessment is Table 12-43 [REP6-125] and the impacts related to cumulative effects were:
- Operational Phase CEA: Potential impact from cumulative displacement.
 - Operational Phase CEA: Potential Impact from collision risk.
- 3.4.12. A summary of the predicted residual effects on offshore and intertidal ornithological receptors is set out in Table 12-65 of Chapter 12 of the ES [REP6-125] and have

been assessed as Negligible during construction, operation, decommissioning and cumulatively. In terms of EIA, they have been assessed to be Not Significant.

- 3.4.13. The Inter-relationships effects considered are set out in Table 12-64 of Chapter 12 of the ES [REP6-125] which states that as none of the offshore impacts on birds were assessed individually to have any greater than a Minor Adverse effect, the Applicant considers it highly unlikely that they would inter-relate to form an overall significant effect on offshore and intertidal ornithology receptors. Full results of the receptor-led effects assessment can be found in Chapter 30: Inter-related effects of the ES [REP6-165].
- 3.4.14. The transboundary effects assessment [REP6-125] states there is some limited potential for collisions and displacement at offshore wind farms outside UK territorial waters. However, the operational offshore wind farms in Belgium, the Netherlands, and Germany are comparatively small (collectively, these projects are of a similar size to no more than one to two of the more recent UK OWFs, such as East Anglia ONE). There are no operational offshore wind farms within French territorial waters in the English Channel. The inclusion of non-UK offshore wind farms is considered by the Applicant to be very unlikely to alter the conclusions of the existing cumulative assessment, and highly likely to reduce estimated impacts at population levels if calculated at larger spatial scales.
- 3.4.15. The assessment considered potential transboundary effects on neighbouring MCZs in France, including all Natura 2000 sites along the English Channel/North Sea coastline. Special attention is paid to the Picardy estuaries and Opal marine nature reserve, which are geographically the nearest non-UK protected areas to the Proposed Development project zone. The ES concludes that no significant transboundary effects are currently expected to arise from the Proposed Development, despite a potential residual risk of collision for individuals that originate beyond UK borders and fly through the Proposed Development project zone.

Examination Issues

- 3.4.16. As the majority of offshore and intertidal ornithological issues in the Examination were HRA related, the main non HRA related offshore and intertidal ornithological issues were:
- Breeding season figures for guillemot and razorbill.
 - Breeding season figures and cumulative effects for GBBG.
- 3.4.17. The potential effects of the Proposed Development on offshore and intertidal ornithology featured in the IAPI under point 6 ecology, set out by the ExA at the start of the Examination [PD-006, Annex C].
- 3.4.18. The LIRs submitted [REP1-054], [REP1-046], [REP1-039], [REP1-044] and [REP1-049] did not raise any issues on the matter of offshore ornithology. Issues were raised in some LIRs and by IPs regarding impacts on Climping Beach SSSI where the intertidal zone supports populations of wintering birds, particularly sanderling. This issue is covered in the section on Terrestrial Ecology and Nature Conservation of this Recommendation.

- 3.4.19. Issues regarding offshore and intertidal ornithology were raised by NE in its RR [RR-265] and first Risk and Issues Log at Deadline 1 [REP1-059a] and featured in NE's PADS [AS-011].
- 3.4.20. The MMO stated in its RR [RR-219] that it deferred to NE as the SNCB and supports any comments raised by NE in relation to offshore ornithology.

Breeding season figures for guillemot and razorbill

- 3.4.21. NE raised a concern in its RR [RR-265] and Risk and Issue Log at Deadline 1 [REP1-059a] that breeding season Biologically Defined Minimum Population Scale (BDMPS) figures are presented using NE's approved method, alongside an alternative method proposed by the Applicant. In the case of the GBBG, guillemot, and razorbill, NE stated the Applicant's method employs the greatest annual BDMPS figure, and the Applicant has chosen to take this forward to compare against annual predicted mortalities, which NE stated it did not support. NE noted [REP1-059a] that the resulting differences between the Applicant's approach and NE's advised method were relatively minor and should not result in a material change to the impact totals.
- 3.4.22. The Applicant responded at Deadline 1 [REP1-017] stating that the alternative method employed by the Applicant builds on NE's method by including consideration of seabirds associated with non-UK colonies. The Applicant stated that given the location of the Proposed Development, the Applicant considered this to be an appropriate deviation from the approved method, especially considering that non-UK seabirds designated sites have been screened in and assessed within the RIAA [APP-038]. The Applicant welcomed NE's conclusion that this would not materially affect the conclusions drawn.
- 3.4.23. The ExA requested an update on this issue from NE in WQ OR 1.3 [PD-009] to which NE responded at Deadline 3 [REP3-086] to say that for guillemot and razorbill, NE does not have concerns around the breeding season population used as a reference for EIA-scale impacts. Although the Applicant has used a method NE does not agree with to calculate the population, the final figure does not vary significantly from NE's recommended figure, and NE confirm this variation does not make a material difference [REP3-086]. The ExA did not consider it necessary to explore the matter further in the Examination for guillemot and razorbill but did continue to examine this matter for GBBG.

Breeding season figures and cumulative effects for great black-backed gull

- 3.4.24. NE stated at Deadline 3 [REP3-086] that the breeding season population calculated by the Applicant and used as a reference for EIA-scale impacts is significantly larger than it should be. This has the effect of making the impact from the Proposed Development on GBBG appear less significant than it would using the correct reference population. NE stated it therefore retained concerns over the cumulative impact assessment for GBBG as it considered the adverse impact on the relevant population to be more significant than presented in the ES and retained concern that the cumulative impact assessment for GBBG appears to contain multiple data gaps, and that therefore the cumulative impact on this species may be greater than presented.
- 3.4.25. Alongside this, NE had raised in its RR [RR-265] and Risk and Issue Log at Deadline 1 [REP1-059a] that it did not agree that the cumulative impact of the Proposed Development and other projects on GBBG across the UK Southwest and

Channel BDMPS is not significant. NE stated that a 1.99% increase on baseline mortality is significant in EIA terms, and the Population Viability Analysis (PVA) results show that this would severely impact the regional population, resulting in a population 19% smaller than the counterfactual after 30 years. NE stated that the Applicant had not considered the magnitude of this result. NE contended that initial indications from the results of the recent Isles of Scilly SPA surveys indicated that the SPA population has been in decline since 2015. NE added that while many of the figures presented by other wind farms may be precautionary, the Applicant had not taken into account the fact that the cumulative assessment contains numerous data gaps from older wind farms and advised this is considered further.

- 3.4.26. A document detailing the GBBG assessment sensitivity was submitted into the Examination by the Applicant at Deadline 1 [REP1-038] to which NE responded at Deadline 3 [REP3-080] stating that it did not support the Applicant's conclusion from this document that as a significant number of gulls use the existing Rampion 1 turbine platforms as roosting areas, the collision risk appears inflated. NE stated they consider that birds attracted to turbine platforms for roosting are likely to be at significant risk of collision due to proximity to the blades. NE stated they have concerns about the uncertainties regarding the effectiveness of gull deterrent measures proposed by the Applicant in [REP1-038]. NE stated it continued to advise that the impacts of the Proposed Development on GBBG are likely to be significant at the EIA scale when considered cumulatively with other offshore windfarms and advised that the impacts from the Proposed Development alone and cumulatively with other projects should be assessed using the Southwest UK and Channel non-breeding BDMPS population of 17,742 individuals as the reference population.
- 3.4.27. The Applicant responded at Deadline 4 [REP4-070] stating that its GBBG Deadline 1 Submission [REP1-038] documented a total of 58 GBBGs roosting on platforms which equates to significantly less than 1% (0.3%) of the UK Southwest and Channel BDMPS (based on a population of 17,742 individuals) and stated it disagreed with NE's position.
- 3.4.28. The ExA asked for an update on this issue in WQs [PD-012 OR 2.1] to which NE responded at Deadline 5 [REP5-141] that there had been no further discussion on this topic with the Applicant.
- 3.4.29. The ExA raised a WQ on this issue before the close of the Examination [PD-017 OR 3.1] noting that the Applicant remained in disagreement with NE regarding this point [REP5-141]. The Applicant stated [REP6-275] that the only mitigation measure NE have confidence in to reduce potential collision impacts for GBBG, would be to raise the minimum air gap of the WTG, and that NE had agreed that raising the turbine blades higher would result in increased visual impacts on designated landscapes, notably the SDNP. Therefore, in this instance, NE considered that it is not an appropriate mitigation measure for the Applicant to pursue [REP2-040]. This had been explored in the early part of the Examination at ISH1 under agenda item 9(i) which covered the worst-case scenario for ornithological collision and displacement risk. The Applicant's post hearing note stated that NE would normally advocate a project to increase the minimum turbine air gap but that the circumstances of the Proposed Development mean it is not appropriate to seek a higher air gap, which NE had accepted [REP1-033].
- 3.4.30. Also, of note to the ExA during the Examination was that no compensation measures had been offered by the Applicant for this impact. The ExA asked the

Applicant [PD-017, OR 3.1] what could be achieved if the Secretary of State was minded to accept the advice of NE regarding the cumulative effects on the GBBG and subsequently wishes compensation measures to be implemented.

3.4.31. At Deadline 6, the Applicant provided an updated cumulative assessment within Appendix 12.6 of the ES [REP6-193]. This accounted for NE's request to assess against the Southwest UK and Channel non-breeding BDMPS of 17,742 individuals. The assessments also included consideration of the cumulative gap analysis work recently completed by White Cross OWF in order to account for the data gaps noted by NE. The Applicant's conclusions with regard to the updated assessments was that the level of impact predicted would not lead to a significant adverse effect for GBBG cumulatively. The Applicant's justification [REP6-275] was that:

- The results of the GBBG sensitivity assessment [REP1-038] demonstrated the level of precaution within recommended assessment approach with a single value reducing potential impacts by approximately 85% per annum.
- The UK GBBG population has seen decline in recent years, skewed by the significant decline noted within the Scottish population (63% in the last 15- 20 years) which makes up the majority of the UK population. Although significant steps have already been made by to curb this decline, through removal of GBBG from general licencing and updated guidance for gull licencing in Scotland, which aims to reduce the number of licences that are issued to control gulls in towns and cities each breeding season. Additionally, the recent ban on sandeel trawling within the UK has the potential to increase prey species for GBBG such as puffin, further adding to potential curbing of population decline.
- The Southwest UK and Channel regional population for which the Proposed Development has connectivity, can be considered stable to increasing, based on the latest seabird census, in contrast to the UK population trend. This is despite a total of 11 offshore wind farm developments being operational for between nine and 21 years within the BDMPS region.
- There is uncertainty as to whether GBBGs are actually in decline, rather than the population stabilising back to baseline population levels following changes to landfill waste and commercial fishery discard practices, alongside an increase in top-down suppression on GBBG abundance by other predators increasing in recent years.

3.4.32. The Applicant added [REP6-275] that feasible effective compensation measures which the Proposed Development could implement to increase GBBG numbers is considered significantly limited as key drivers of population decline in GBBG relates to prey availability, culling and predator suppression. The Applicant considered these factors predominately outside of the control of a private developer to intervene. The Applicant contended that another key consideration with respect to GBBG compensation, would be the negative effect on other bird species increasing the numbers of GBBG would have, due to increased predation pressure. The Applicant gave an example from the Ilse of May where current levels of puffin predation mortality (1,120 puffins per year) from GBBGs is sustainable. However, the Applicant stated [REP6-275] that if the population of GBBGs significantly increased at the colony this could tip the puffin population at the Ilse of May into decline. The Applicant added that increasing GBBG numbers in urban environments has the potential to lead to conflicts with humans, which can lead to additional lethal

and non-lethal control of GBBGs being required negating any compensation benefit to the species.

- 3.4.33. At Deadline 6 in response to the ExA WQ OR 3.1 [REP6-274] the Applicant invited NE to view Table 2-2 of the Applicant's Response to the ExA's Request for Further Information [REP6-275] submitted at Deadline 6.
- 3.4.34. At Deadline 6 NE continued to advise in its final Risk and Issues Log [REP6-296] that the impacts of the Proposed Development on GBBG would likely be significant at the EIA scale when considered cumulatively with other offshore windfarms. NE advised the Applicant [REP6-288] to carry out post-consent monitoring to facilitate a better understanding of how GBBGs use the existing Rampion 1 OWF array. NE advised it would be useful to understand how that usage related to birds roosting on the outer array turbines and whether deterrents could reduce roosting behaviour and as a result level of activity within the array. NE suggested this monitoring should then be expanded to the Proposed Development to explore how gull behaviour might change if the Proposed Development was constructed and whether there would be a need to mitigate for collision risk. NE noted that Commitment C-298 in the Commitments Register [REP6-227] commits the Applicant to undertaking post consent offshore monitoring that would be secured in the In-Principal Monitoring Plan (IPMP) but that no other specific commitments have been made by the Applicant in regards to this issue.
- 3.4.35. The MMO raised in its RR [RR-219] that the Applicant should demonstrate consideration of whether the Proposed Development adheres to all the relevant marine plans and policies in the area. In response the Applicant submitted a Marine Plan and Policies Statement into the Examination at Deadline 2 [REP2-027]. The MMO responded at Deadline 3 [REP3-076] stating policies that required further attention:
- S-INF-1: The MMO consider this policy relevant, and therefore it should be scoped in as the Proposed Development contains land-based infrastructure which facilitates marine activity (WTGs).
 - S-CAB-2: The MMO consider this policy relevant, and therefore it should not be scoped out of the assessment. Even though Rampion 2 is not a subsea cable proposal, the Climping landfall site should still be assessed here.
 - S-AGG-4: The MMO acknowledge that the source of marine aggregates will not be determined until the Final Scour Protection Cable and Protection Plan is completed, which will be reviewed by the MMO.
- 3.4.36. To address the MMO's concerns, the Applicant submitted an updated Marine Plan and Policies Statement into the Examination at Deadline 4 [REP4-068], to which the MMO responded at Deadline 5 [REP5-146] stating they had no further comments.
- 3.4.37. The ExA was satisfied that the Applicant had provided adequate responses to all other raised matters.

ExA's Findings

- 3.4.38. The ExA has considered the effects of the Proposed Development on offshore and intertidal ornithology in the context of the policy framework set by the Overarching National Policy Statement for Energy (NPS EN-1 2011 and 2024), the National Policy Statement for Renewable Energy Infrastructure (NPS EN-3 2011 and 2024), the South Marine Plan and the Marine Policy Statement 2011.

- 3.4.39. Section 5.3 of the NPS EN-1 2011 and section 5.4 of NPS EN-1 2024 set out policy considerations that are of relevance for biodiversity and ecology in general.
- 3.4.40. Paragraphs 2.6.58 to 2.6.71 of the NPS EN-3 2011 and paragraphs 2.8.95 to 2.8.110 of EN-3 2024, provide offshore wind specific biodiversity and ecology policy.
- 3.4.41. The assessment for Offshore Ornithology specifically as set out in NPS EN-1 2011 paragraphs 2.6.64 to 2.6.110 and the NPS EN-3 2011 paragraphs 2.8.136 to 2.8.146 and require the Applicant:
- To discuss with the relevant statutory advisor on the scope, effort and methods required for ornithological surveys, reference to relevant data from operational OWFs, including collision risk modelling with rotating blades, habitat loss, disturbance and displacement for certain species of birds and where necessary using survey data collected from the site, including consideration of turbine layout and lighting to avoid attracting birds to minimise collision risk.
 - To meet requirements in respect of the Marine Licence.
 - To integrate measures such as minimise construction-related disturbance, minimising aviation and navigation lighting, restoration, enhancement of habitats or creation of new habitats after construction, design turbine layout to minimise collision risk, ensure construction vessels are compatible with navigational safety, avoid rafting seabirds during sensitive periods, ecological monitoring during the construction and operational phases and overall careful design and construction techniques.
- 3.4.42. In addition, NPS EN-1 2024 requires the Applicant to:
- Consider the movement of mobile/migratory species such as birds, fish and marine and terrestrial mammals and their potential to interact with infrastructure.
 - Consider the need for compensation as early as possible in the design process and that applicants should work closely at an early stage in the pre-application process with SNCB and the Department for the Environment, Food and Rural Affairs (Defra) to develop compensation plans.
- 3.4.43. In addition, NPS EN-3 2024 requires the Applicant to:
- Consider potential impacts to prey-species and prey habitat and impacts on protected species.
 - Include provisions to define the final 'as built' parameters (which may not then be exceeded), which must be used in future cumulative impact assessments. It introduces ornithological 'headroom', between the effects defined in the 'as built' parameters and Rochdale Envelope parameters which can then be released with SNCB agreement. Applicants are encouraged to make appropriate applications for amendments to development consent to secure reduced parameters and ornithological impacts. Applicants should discuss the scope, effort and methods required for ornithological surveys with the relevant statutory advisor, taking into consideration baseline and monitoring data from operational windfarms.
 - Undertake collision risk modelling as well as displacement and population viability assessments for certain species of birds. Where necessary, applicants should assess collision risk using survey data collected from the site at the pre-application EIA stage.

- 3.4.44. Mitigation requirements for birds is set out in EN-3 2011 in paragraphs 2.6.107 to 2.6.110 and EN-3 2024 paragraphs 2.8.240 to 2.8.244, with minor alterations to the 2024 version.
- 3.4.45. NPSs EN-1 and EN-3 2011 state that in reaching a decision the Secretary of State should take into account:
- Attaching weight to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity.
 - The need to avoid significant harm but where significant harm cannot be avoided, to seek appropriate compensation measures.
 - If the benefits of nationally significant low carbon energy infrastructure for biodiversity and geological conservation interests may outweigh harm to these interests.
 - Whether the assessment of collision risk for birds has been conducted to a satisfactory standard having had regard to the advice from the relevant statutory advisor.
- 3.4.46. NPS EN-3 2024 adds that:
- The Secretary of State must be satisfied displacement assessments have been conducted to a satisfactory standard having had regard to the advice from the relevant statutory advisor.
 - The conservation status of seabirds is of relevance and the Secretary of State should take into account the views of the relevant statutory advisors and be satisfied that cumulative and in-combination impacts on seabird species have been considered.
 - The Secretary of State may consider that monitoring of any impact is appropriate owing to the complex nature of offshore wind development, and the difficulty in establishing the evidence base for marine environmental recovery.
- 3.4.47. The South Marine Plan is of relevance.
- 3.4.48. In relation to the breeding season figures for guillemot and razorbill, NE stated at Deadline 3 [REP3-086], that it does not have remaining concerns as, although the Applicant has used a method it did not agree with to calculate the population, the final figure does not vary enough from NE's recommended figure to make a material difference. The ExA is therefore satisfied with the breeding season figures for guillemot and razorbill that have been applied by the Applicant and therefore the ExA considers this matter to have been resolved and that no harm would arise to these species in terms of EIA, as a result of the Proposed Development.
- 3.4.49. Regarding the cumulative effects on GBBG, the ExA notes that at the close of the Examination the Applicant and NE held differing views on the effects of the Proposed Development on GBBG and mitigation and compensation remained unresolved at the close of the Examination. NE advised that there would likely be an adverse impact which would be significant at the EIA scale when considered cumulatively with other offshore windfarms [REP6-296] and the Applicant maintained that there would not [REP6-193]. The ExA notes the updated cumulative assessment provided by the Applicant at Deadline 6 [REP6-193] but as this was submitted very late in the Examination there was no opportunity for NE to provide comment. Because NE was not able to provide a response to the Applicant's Deadline 6 submissions in relation to GBBG [REP6-193], the ExA has taken 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. The Secretary of State may wish to seek further information from NE on its response to the Applicant's submission at Deadline 6 on the updated cumulative assessment for GBBG [REP6-193] and whether it is satisfied that potential effects to GBBG would not be significant.

- 3.4.50. The ExA notes that both parties agreed that there was no practicable mitigation possible beyond increasing the air gap to reduce collision risk by raising the height of the wind turbines, which both parties stated was not feasible at this location due to the resulting visual impact [REP2-040]. This was discussed at ISH1 and referenced in the post-hearing note [REP1-033].
- 3.4.51. In terms of compensation, the ExA considers that the Applicant has advanced a strong case as to the potential disbenefits of increasing GBBG numbers on other species populations and conflict with humans. However, it concerns the ExA that potentially significant effects remain for GBBG for which no adequate mitigation or compensation has been proposed.
- 3.4.52. In terms of post-consent monitoring, the ExA acknowledges the policy in NPS EN-3 2011 paragraph 2.6.71, which states that monitoring is likely to be appropriate to identify the actual impact so that adverse effects can then be mitigated. The ExA also notes the requirements of NPS EN-3 2024 in paragraphs 2.8.295 and 2.8.296 which 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.
- 3.4.53. The ExA notes that NE listed a number of post-consent monitoring activities of both existing turbines and the Proposed Development to facilitate better understanding of gull behaviour and impacts and to test the Applicant's arguments around the inflated number of birds due to Rampion 1 and that the SNCB's recommended parameters for collision-risk modelling are overly precautionary [REP6-288].
- 3.4.54. The ExA notes that Commitment C-298 in the Commitments Register [REP6-227] commits the Applicant to undertaking post consent offshore ornithological monitoring that will be secured in the In Principle Monitoring Plan (IPMP). The IPMP is secured by Condition 11 of the DML which is contained within the Recommended DCO which NE must approve.
- 3.4.55. The ExA is satisfied that Condition 18(5) of the Recommended DCO 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 SNCBs.

Conclusions

- 3.4.56. The ExA examined all the Applicant's submitted assessments and considered all the issues raised during the Examination related to offshore and intertidal ornithology.

- 3.4.57. The ExA does not concur with ES Chapter 12 [REP6-125] that the significance of effect from the Proposed Development on offshore and intertidal ornithology would, taken as a whole, be Negligible (Not Significant) from an EIA perspective. The ExA concludes that there could potentially be a significant effect caused by the Proposed Development on offshore and intertidal ornithology from an EIA perspective in respect of GBBG, when considered cumulatively with other offshore windfarms. The ExA recognises that for the time-being there are no proposals which adequately mitigate this possible effect.
- 3.4.58. The ExA also recognises there is concern whether proposed compensation measures could have negative impacts on other bird species and could increase conflicts with humans. The ExA is content that the DML secures adequate post-consent monitoring as advised by NE to inform the need for future mitigation and that Condition 18(5) of the Recommended DCO regarding adaptive management is adequate such that in the event monitoring identifies impacts which are beyond those predicted in the ES, an adaptive management plan to reduce effects to within what was predicted within the ES would be required by the Applicant. The ExA recognises there is likely to be a time delay between identification of effects through monitoring and outcomes from the implementation of an adaptive management plan which may result in some harm to GBBG in the short term.
- 3.4.59. The ExA has considered the effects of the Proposed Development on offshore and intertidal ornithology in the context of the policy framework set by NPS EN-1 2011 and NPS EN-3 2011 and the relevant marine plans and policies. The ExA concludes that the Proposed Development is in accordance with the relevant sections of NPSs EN-1 2011 and EN-3 2011 and is satisfied that all relevant legislation, other national policies and strategies, and relevant local policies are complied with, that adequate mitigation is secured in the Recommended DCO regarding offshore and intertidal ornithology and there are no other important or relevant considerations.
- 3.4.60. Subject to Condition 18(5) being included in the Recommended DCO, the ExA ascribes a Little Negative weight relating to the EIA aspects of offshore and intertidal ornithology in the planning balance when taken as a whole.
- 3.4.61. Under the Transitional Arrangements, policy compliance with NPS EN-1 and EN-3 2024 is not required. The ExA has nevertheless identified that the Proposed Development would not fully comply with paragraphs 2.8.137 to 2.8.140 of NPS EN-3 2024 as the Applicant has not provided a Requirement in the final draft DCO [REP6-007] in relation to providing "as built" parameters to be used in future cumulative assessments.
- 3.4.62. However, the ExA considers this to be a technical matter only, and that the broad thrust of policies in NPS EN-3 2024 are not dissimilar to those to NPS EN-3 2011, rather than they require new applications to go further. Therefore, there is nothing in NPS EN-1 2024 which would render the current scheme to be considered unacceptable in ornithological matters when taking into account the regard to be had to it during the Transitional Arrangements.

3.5. MARINE MAMMALS

The Applicant's Case

- 3.5.1. This section looks at the effects of the Proposed Development both alone and cumulatively, on marine mammals. The potential impact on marine mammal

features of European Sites, are considered in detail in Section 4 of this Recommendation relating to HRA.

- 3.5.2. The Applicant's assessment of marine mammals is set out in the ES - Volume 2 Chapter 11 Marine mammals [APP-052 updated at Deadline 6 REP6-123] and Volume 3 Chapter 11 Marine mammals – Figures [APP-084].
- 3.5.3. Other relevant application documents include:
- Appendix 11.1 of the ES: Marine mammal baseline technical report [APP-147].
 - Appendix 11.2 Marine mammal quantitative underwater noise impact assessment [APP-148].
 - Appendix 11.3 Underwater noise assessment technical report [APP-149].
 - Draft Piling Marine Mammal Mitigation Protocol Revision C [REP6-218].
 - Draft Unexploded Ordnance Clearance Marine Mammal Mitigation Protocol Revision B [REP5-078].
 - Ornithological and Marine Mammal Aerial Survey Results of Rampion 2 – 2021 [REP1-035].
 - Offshore In Principle Monitoring Plan [REP6-220].
- 3.5.4. The ES Chapter 11 [REP6-123] was split into sections broadly in the following areas:
- Scope of the assessment.
 - Methodology and baseline data gathering.
 - Baseline conditions.
 - Basis for the ES assessment including MDS and embedded environmental measures.
 - Methodology for the ES assessment.
 - Assessment of effects including cumulative, inter-related and transboundary effects.
 - Summary of residual effects.
- 3.5.5. The baseline characterisation for marine mammals is presented in Appendix 11.1: Marine mammal baseline technical report [APP-147] and details the occurrence of marine mammal species present in the study area, compiled through a combination of literature reviews and data obtained from site-specific surveys, details of which are presented in Table 11-12 [REP6-123].
- 3.5.6. The ES [REP6-123] states the marine mammals identified for assessment were any within the study area which included harbour porpoise, common dolphin, bottlenose dolphin, minke whale, harbour seal and grey seal.
- 3.5.7. During the construction phase the impacts identified were:
- Piling construction noise impacts including Permanent Threshold Shift (PTS), Temporary Threshold Shift (TTS) and disturbance.
 - Underwater noise from UXO clearance.
 - Underwater noise from seabed preparation, rock dumping and cable installation.
 - Underwater noise from other construction activities.
 - Vessel collision.
 - Vessel disturbance.
 - Changes to prey availability.
 - Disturbance to seal haul out sites and landfall.

- 3.5.8. During the operational phase the impacts identified were:
- Operational underwater noise from WTGs.
 - Vessel collision.
 - Vessel disturbance.
 - Changes to prey availability.
- 3.5.9. During the decommissioning phase the impacts identified were:
- Decommissioning noise impacts including PTS, TTS and disturbance.
 - Underwater noise from other construction activities.
 - Vessel collision.
 - Vessel disturbance.
 - Changes to prey availability.
 - Disturbance to seal haul out site at landfall.
- 3.5.10. The approach to the cumulative effects assessment (CEA) is outlined in [REP6-123] starting at section 11.12.3. The projects considered within the cumulative effect assessment is in Section 11.12 of REP6-123, Table 11-34 and Table 11-36.
- 3.5.11. Some key embedded environmental mitigation measures relevant to marine mammals include those below, see Table 11-14 of [REP6-123] and the Commitments Register [REP6-227] for the full list of relevant commitments:
- Commitment C-51 states that a Vessel Management Plan will be developed pre-construction which would determine vessel routing to and from construction areas and ports to minimise, as far as reasonably practicable, encounters with marine mammals. It would also consider vessel codes of conduct provided by WiSe Scheme, Scottish Marine Wildlife Watching Code (MWWC) and the Nature Scotland "Guide to best practice for watching marine wildlife".
 - Commitment C-52 states that a piling Marine Mammal Mitigation Protocol (MMMP) would be implemented during construction and would be developed in accordance with Joint Nature Conservation Committee (2010) guidance and with the latest relevant guidance and information and in consultation with stakeholders. The piling MMMP would include details of soft starts to be used during piling operations with lower hammer energies used at the beginning of the piling sequence before increasing energies to higher levels.
 - Commitment C-102 states that a UXO Clearance MMMP would be developed in consultation with NE to appropriately manage the risk to marine mammals during UXO clearance.
 - Commitment C-265 states that double big bubble curtains (DBBC) would be deployed as the minimum single offshore piling noise mitigation technology and would be utilised to deliver underwater noise attenuation for all foundation installations throughout the construction of the Proposed Development where percussive hammers are used in order to reduce predicted impacts to sensitive receptors at relevant MCZ sites and reduce the risk of significant residual effect on the designated features of these sites, spawning herring and marine mammals.
 - Commitment C-275 states that the use of low order detonations using the 'deflagration method' would be the prioritised method of disposal for Offshore UXOs, and would be implemented, where practicable.
 - Commitment C-298 states that where appropriate, the results of post consent monitoring, data and reports will be made publicly available and provided to the relevant data repositories.

- 3.5.12. The outcomes of the Applicant's assessment of marine mammals in the ES [REP6-123] are summarised below.

Construction phase

Piling noise assessment - PTS

- 3.5.13. The Applicant assessed the magnitude of PTS from pile driving as Very Low for all marine mammal species and the sensitivity has been deemed to be Low resulting in a Negligible (Not Significant) impact as shown in Table 11-28 [REP6-123].

Piling noise assessment - disturbance

- 3.5.14. For minke whales, common dolphins, bottlenose dolphins and harbour porpoises, the magnitude is considered to be Low by the Applicant and for harbour seal and grey seal the magnitude is considered to be Very Low.
- 3.5.15. The Applicant has deemed the sensitivity to be Low for all marine mammals with the exception of grey seal which is Very Low. This results in a predicted impact of Minor Adverse (Not Significant) for harbour porpoise, bottlenose dolphin, common dolphin and minke whale and Negligible (Not Significant) for harbour seal and grey seal as shown in Table 11-29 [REP6-123].

UXO noise assessment

- 3.5.16. Overall, the maximum sensitivity of marine mammals to underwater noise from other UXO clearance is deemed by the Applicant to be Low, with a maximum magnitude of effect predicted to be Low. Therefore, the significance of effect of underwater noise from other construction activities is predicted to be of Minor Adverse (Not Significant).

Underwater noise from seabed preparation, rock dumping and cable installation

- 3.5.17. The Applicant assesses the maximum sensitivity of marine mammals to underwater noise from other construction activities is Low, with a maximum magnitude of effect predicted to be Very Low. Therefore, the significance of effect of underwater noise from other construction activities is predicted to be of Negligible (Not Significant).

Vessel collision risk

- 3.5.18. The magnitude is considered by the Applicant to be Very Low and the sensitivity of marine mammal receptors to vessel collisions is considered to be High. Therefore, the Applicant assesses that with the mitigation in place the effect is concluded to be of Minor Adverse (Not Significant).

Vessel disturbance

- 3.5.19. The magnitude is considered by the Applicant to be Low and the sensitivity of marine mammal receptors to vessel disturbance is considered to be Low. Overall, the sensitivity of all marine mammals to vessel disturbance has been assessed as Low and the magnitude is predicted to be Low. Therefore, the effect has been assessed by the Applicant as Minor Adverse (Not Significant).

Changes to prey availability

- 3.5.20. The magnitude of changes to prey availability during construction activities is considered by the Applicant to be Very Low very short-term and recoverable, with

no potential for survival and reproductive rates to be impacted to the extent that the population trajectory would be altered. The sensitivity of the receptor is considered by the Applicant to be Low and therefore overall, the magnitude of all marine mammal receptors to a change in prey availability has been assessed as Very Low, with a sensitivity of Low. Due to the very low magnitude of the effect, there would be no indirect effect to the marine mammal receptors, with the significance of effect predicted to be of Negligible (Not Significant).

Disturbance to seal haul out sites and landfall

- 3.5.21. The magnitude is considered by the Applicant to be Very Low, given that the local haul out sites are already exposed to relatively high levels of vessel activities and animals are likely to be habituated to vessel disturbance. The sensitivity of seals to disturbance from haul out sites is considered by the Applicant likely to vary depending on the time of year and the reason the animals are hauled out. Harbour seal pups only a few hours old were recorded within Chichester harbour, and thus the site was identified as a pupping area. Therefore, it is expected that during the breeding season (May to September), harbour seals sensitivity to disturbance at haul-out sites is Medium as disturbance may result in impacts to vital rates, particularly for new-born pups. At other times of the year the sensitivity is likely to be lower.
- 3.5.22. During the harbour seal breeding season, the sensitivity of harbour seals to disturbance has been assessed as Medium. At other times of the year the sensitivity is likely to be lower. Given the existing levels of traffic and the likelihood that seals are habituated to vessel presence in the area, the magnitude is predicted to be Very Low. Therefore, the resulting impact significance for disturbance to seal haul outs is of Minor Adverse at most, lower outside of the breeding season, which the Applicant concludes is Not Significant.

Operation and maintenance phase

Noise

- 3.5.23. The impact is predicted by the Applicant to be of limited local extent, long term duration and continuous. The magnitude of both PTS and disturbance from operational noise is therefore considered to be Very Low. The sensitivity of all marine mammal receptors is therefore considered to be Very Low and therefore overall, the sensitivity of all marine mammal receptors has been assessed by the Applicant as Very Low and the magnitude is predicted to be Very Low. Therefore, the significance of the effect has been predicted to be of Negligible (Not Significant).

Vessel collision risk

- 3.5.24. The magnitude of vessel collisions with marine mammals during operation and maintenance activities relating to the Proposed Development is considered by the Applicant to be Very Low. The sensitivity of marine mammal receptors to vessel collisions is considered to be High. Therefore, the Applicant deems the application of the mitigation enables a conclusion for the effect to be of Minor Adverse (Not Significant).

Vessel disturbance

- 3.5.25. Overall, the sensitivity of all marine mammals to vessel disturbance has been assessed as Low and the magnitude is predicted to be Low and therefore the Applicant deems the effect is of Minor Adverse (Not Significant).

Changes to prey availability

- 3.5.26. Overall, the magnitude of all marine mammal receptors to a change to prey availability has been assessed by the Applicant as Very Low. The sensitivity of marine mammal receptors is considered to be Low. Consequently, the Applicant stated there would be no indirect effects on the marine mammal receptors considered, resulting in an impact of Negligible (Not Significant).

Decommissioning phase

Noise impacts including PTS, TTS and disturbance

- 3.5.27. The impact from PTS, TTS and disturbance to marine mammals from decommissioning has been assessed by the Applicant as of a maximum of Minor Adverse (Not Significant).

Vessel collision risk

- 3.5.28. The significance of effect from vessel collisions on marine mammals has been assessed by the Applicant as being of Minor Adverse (Not Significant).

Vessel disturbance

- 3.5.29. The significance of effect from vessel disturbance on marine mammals has been assessed by the Applicant as being of Minor Adverse (Not Significant).

Changes to prey availability

- 3.5.30. The significance of effect from changes to prey availability on marine mammals has been assessed by the Applicant as being of Minor Adverse (Not Significant).

Disturbance to seal haul out sites and landfall

- 3.5.31. The significance of effect from disturbance to seal haul out sites has been assessed by the Applicant as being of Minor Adverse (Not Significant).

Cumulative assessment

- 3.5.32. In terms of the cumulative impact of disturbance from underwater noise for harbour porpoise and minke whale the ES [REP6-123] assesses the sensitivity to disturbance from underwater noise as low and the magnitude as medium and therefore, the significance of the effect as Minor Adverse, which the Applicant concludes is Not Significant.
- 3.5.33. For the bottlenose dolphin and the common dolphin the ES [REP6-123] assesses the sensitivity to disturbance from underwater noise of bottlenose dolphin as Low, the magnitude predicted to be Low and therefore, the significance of the effect as Minor Adverse (Not Significant).
- 3.5.34. The ES [REP6-123] states there is a potential risk of other projects within the marine mammal Zone of Influence (ZOI) to increase the total number of vessels within the vicinity, greater than that caused by construction activities on the Proposed Development alone. This cumulative assessment considers the increased potential for disturbance to marine mammals due to the potential increase in vessel movements from the construction of the Proposed Development with other planned or existing projects, plans and activities. Overall, the sensitivity of all marine mammals to vessel disturbance was assessed as Very Low (see paragraph

11.9.70) and the magnitude of the cumulative increase in vessel disturbance is predicted to be Low. Therefore, the effect was assessed as of Negligible (Not Significant).

- 3.5.35. The Applicant deemed there to be no significant transboundary effects from the Proposed Development [REP6-123].
- 3.5.36. Inter-related effects in the ES on marine mammals [REP6-165, Table 30-11] indicates effects due to disturbance from underwater noise, collisions and disturbance from vessels and changes to prey availability were assigned residual effects of Negligible to Minor Adverse (Not Significant).

Examination Issues

- 3.5.37. The main issues in the Examination relating to marine mammals were:
- Marine mammal underwater noise modelling.
 - The definitions of magnitude and sensitivity for marine mammals in the ES and the sensitivity of cetaceans to PTS.
 - The worst-case for piling including simultaneous piling.
 - The piling soft start/ramp up profile.
 - Acoustic Deterrent Device (ADD) duration.
 - Bottlenose dolphin baseline and assessment.
 - Harbour porpoise CEA.
 - The Vessel Management Plan.
 - Securing Commitments relating to Marine Mammals.
 - Post consent monitoring for underwater noise.
 - Unexploded Ordnance Clearance MMMP.
- 3.5.38. The potential effects of the Proposed Development on marine mammals featured in the IAPI under point 6 ecology, set out by the ExA at the start of the Examination [PD-006, Annex C].
- 3.5.39. The LIRs submitted were silent on the matter of marine mammals.
- 3.5.40. Issues regarding marine mammals were raised by NE in its RR [RR-265] and first Risk and Issues Log at Deadline 1 [REP1-059a] but were not listed as a principal area of disagreement in NE's PADS [AS-011]. NE provided specific advice on marine mammals throughout the Examination at Deadline 3 in response to action points from ISH1 [REP3-081], at Deadline 5 [REP5-138] and Deadline 6 [REP6-289]. The MMO also raised concerns regarding marine mammals in its WR [REP1-056] but not in its PADS [AS-005].

Marine mammal underwater noise modelling

- 3.5.41. The MMO raised a concern in its RR [REP1-056] that the results of the underwater noise modelling presented in Appendix 11.3 [APP-149] had been misinterpreted by the Applicant. The MMO stated it is incorrect for the Applicant to contend that an animal would have to stay within the immediate vicinity of a noise source for 24 hours to be at risk of auditory injury. The MMO disagreed with the Applicant's assessment that the risk of auditory injury to marine mammals from these activities would be de minimis.
- 3.5.42. At Deadline 6 [REP6-302] the MMO stated that it did not believe this assertion by the Applicant significantly alters the conclusions of the ES, but that the MMO

wanted this to be noted if the information and statement is ever referred to if the Secretary of State is minded grant development consent.

The definitions of magnitude and sensitivity for marine mammals in the ES and the sensitivity of cetaceans to PTS

- 3.5.43. NE raised a concern regarding the definitions of magnitude and sensitivity for marine mammals in the ES, point C1, of its Risk and Issues Log at Deadline 1 [REP1-059a], stating the definition used within the LSE Matrix could underestimate the likely effects on marine mammals.
- 3.5.44. The Applicant confirmed [REP1-017], that it had renamed the sensitivity ratings from Very High, High, Medium, and Low to High, Medium, Low, and Very Low between PEIR and the submission of the ES and acknowledged that this change may have caused some confusion. The Applicant stated this was an oversight following consideration of specific questions relating to the impacts of PTS which resulted in a lack of clarity in the presentation of the assessment ratings. The Applicant clarified that the reference to significance in 'sensitivity definition' was designed to clarify the likelihood of an event impacting the vital rates of an individual and 'magnitude' addresses the consequence of any impact at a population level. The use of the term 'significance' in the sensitivity definition was intended to correlate to 'non-negligible' or to distinguish from 'inconsiderable' or more 'trivial' effects. The Applicant stated it understood how the use of this term could detract from the focus of the 'sensitivity' element of the assessment which is related to the likelihood of an event occurring. The Applicant confirmed [REP1-017], that the overall assessment result is the same using either the PEIR or ES application definitions.
- 3.5.45. At the close of the Examination NE stated in its Deadline 6 Risk and Issue Log [REP6-289] that it considered the Applicant had addressed part of its concern by changing the instances of 'Negligible' magnitude to 'Very low' but that there were other parts of this concern that remained outstanding. The Applicant stated in [REP5-119] that it considers the majority of NE's concern on this issue to have been resolved and stated that for the outstanding point relating to the distinctions between definitions of Low and Medium Magnitudes, that there is no possibility of this being resolved in the Examination.
- 3.5.46. The MMO raised a similar related concern in its RR [RR-219] stating cetaceans should be allocated a high level of sensitivity rather than the low level of sensitivity the Applicant had allocated to cetaceans in the ES. The Applicant responded to this at Deadline 1 [REP1-017], stating that based on the best available evidence to date, experts recommend that PTS from piling is unlikely to significantly affect the fitness of individuals defined as their ability to survive and reproduce and that this does not align with a sensitivity score of 'High' and considers the sensitivity set out within the ES to be robust and appropriate. The MMO stated in response to WQ MM 1.1 [REP3-076] that its concerns relating to the sensitivity of cetaceans are shared with NE as there are no considerations for monitoring the effectiveness of suggested mitigation measures in reducing the underwater noise impacts to acceptable levels.
- 3.5.47. The MMO repeated its justification in its Deadline 4 submission [REP4-088] in relation to WQ MM 1.1, stating that the findings the Applicant referenced to support its assessment of cetacean sensitivity were from a commercial report whose findings have not been published in the peer reviewed literature. The MMO stated this does not meet its usual standards of scientific evidence, and that it is not unusual for the MMO not to accept evidence such as this. The MMO added that as

a rule, the use of expert elicitation to derive estimates of quantitative variables, in this case vital rates, should be treated with a large degree of scepticism as the uncertainties are large and the evidence is sparse.

- 3.5.48. The MMO's final PADS at Deadline 6 [REP6-301] stated that it continues to request that cetaceans should be assessed as having a high sensitivity to PTS until the Applicant is able to demonstrate clearly that PTS would have a medium risk. However, the MMO added that the sensitivity scoring does not have a major impact on the overall marine mammal assessment, and the focus should be on ensuring that appropriate mitigation is put in place to reduce the risk of potential impact. The MMO state in its Deadline 6 covering letter at the close of the Examination [REP6-302] the classification of sensitivity has limited bearing on the overall assessment of effects on marine mammals and that the MMO is content that this issue will remain a non-material disagreement.

The worst-case for piling including simultaneous piling

- 3.5.49. NE requested [RR-265] that the worst-case assessed in the ES was clarified in terms of number of piles and pile locations per day.
- 3.5.50. This was explored through WQs [PD-009] and at both ISH1 [REP1-033 item 10], [REP1-033] and ISH2 [EV5-001 agenda item 3] [REP4-072]. At Deadline 5 the Applicant updated Appendix 11.3 [REP5-046] to confirm that the worst-case scenario for multiple location piling includes two monopiles or four pin piles installed sequentially at each location, which addressed one part of NE's concern in NE's Risk and Issue log under point C24.
- 3.5.51. NE requested further clarification in Appendix C5 of its Deadline 5 submission [REP5-138] of whether the worst-case number of piles and pile locations per day in the updated marine mammal ES chapter, is reflected in the underlying modelling and assessment. The Applicant responded at Deadline 6 [REP6-275], in response to the ExA's request for further information [PD-017, MM 3.1] to confirm that the worst-case modelling parameters of 4 monopiles (2 monopiles in 2 locations) and 8 pin piles (4 pin piles in 2 locations) installed in a 24-hour period have been used in the modelling presented in Appendix 11.2: Marine mammal quantitative underwater noise impact assessment [APP-148] and Appendix 11.3: Underwater noise assessment technical report [REP5-046] and which informed Chapter 11: Marine Mammals of the ES [REP6-123]. The Applicant confirmed the update to Chapter 11: Marine Mammals [REP6-123] was a correction of a mistake in the MDS table, that the modelling and subsequent assessment used the worst-case scenario and that no further modelling was required. The ExA did not consider it necessary to explore the matter further in the Examination as the ExA was satisfied it had sufficient evidence to make an informed judgement.

The piling soft start/ramp up profile

- 3.5.52. NE raised a concern in its RR [RR-265] and Risk and Issues Log at Deadline 1 [REP1-059a] that the Draft Piling MMMP should explicitly outline the piling soft start/ramp up procedure modelled as worst-case and commit to not exceeding this soft start/ramp up profile to ensure the worst-case impacts ranges are not exceeded. NE stated that the JNCC guidelines for piling mitigation state the soft start should be a minimum of 20 minutes and therefore it is not appropriate for the Applicant to have a soft start of 7.5 minutes.

- 3.5.53. The Applicant responded to a WQ MM 1.8 [PD-009] from the ExA on this point in [REP3-051] stating that the JNCC 2010 guidance states:
- "The soft-start is the gradual ramping up of piling power, incrementally over a set time period, until full operational power is achieved. The soft-start should be a period of not less than 20 minutes."*
- 3.5.54. Thus, the Applicant contended [REP3-051] that "soft-start" is defined by JNCC as the time before full operational power is achieved. For both monopiles and pin-piles, the Applicant stated the full time before operational power is achieved is 30 minutes and that the 7.5 minutes identified in the piling parameters is only the initial phase of this overall soft-start period, after which there are further steps up in hammer energy, before the full hammer energy is reached.
- 3.5.55. The Applicant confirmed [REP3-051] that for monopiles after the first 7.5 minutes at 880 kJ hammer energy, there is another 7.5 minutes at 1,760 kJ, then another 7.5 minutes at 2,640 kJ and a final 7.5 minutes at 3,250 kJ before the full hammer energy at 4,400 kJ is reached. The Applicant stated it is complying with the JNCC 2010 guidelines and the perceived issue is purely on the use of terminology as highlighted by NE, as opposed to not adhering to guidance.
- 3.5.56. The Applicant updated the MMMP at Deadline 4 [REP4-051], adding Table 2-2 and Table 2-4 summarising the worst-case ramp up scenario for monopile and pin-pile foundations. However, at the close of the Examination, NE's Risk and Issue log on this issue point C33 [REP6-296] stated that the Applicant's updates to the MMMP at Deadline 4 [REP4-051], partially addressed its concern but that the soft start duration was still stated as 7.5 minutes.
- 3.5.57. NE stated at Deadline 6 [REP6-297], that the maximum hammer energy assessed should be included as a condition in the Marine Licence to ensure the noise impacts do not exceed those predicted within the assessment, as per other OWF such as East Anglia One North and East Anglia Two. For the same reason NE advise that other key parameters of the maximum piling scenario assessed in the ES, such as the maximum number of piles/simultaneous locations for piling within 24hrs, should also be conditioned.
- NE stated at Deadline 6 [REP6-287] that amendment of condition 11(1)(c)(i) to note that the construction method statement would include the maximum hammer energy does not address the concerns raised in its RR (Issue A8 of the Risks and Issues log) [REP1-059a]. NE stated that the maximum hammer energy is a key metric of Rochdale Envelope that has been used to assess the impact of noise on marine mammals and sensitive fish species. It should therefore be restricted by specific reference as other important factors have been, such as the number of piles. NE note that all recent OWF DCOs have included specific hammer energy, with some including different limits for monopile and pin piles, citing the DCOs for East Anglia One North and Two as an example. NE also noted that the Marine Licence as drafted would not restrict piling to the maximum scenario assessed in the ES Underwater Noise Assessment in relation to the number of piles/simultaneous locations for piling within 24hrs. The ExA noted the request remained an outstanding matter at the close of the Examination.

Acoustic Deterrent Device duration

- 3.5.58. NE raised a concern in its RR and Risk and Issues Log (C33) [REP1-059a] that the ADD duration is typically based on the PTS range and queried how an appropriate

ADD duration can be calculated if the impact range is not presented for simultaneous piling. NE stated that an appropriate duration is needed to demonstrate that its usage can reduce impacts to an acceptable level. NE advised the Applicant should present an approach to determining appropriate ADD duration for simultaneous piling.

- 3.5.59. The Applicant responded at Deadline 1 [REP1-017] stating that there is no accepted definition for how to define a PTS range for multiple simultaneous piling locations. Where an ADD duration could theoretically cause fleeing towards a second piling location, this cannot be mitigated by an ADD. Therefore, the ADD duration for simultaneous piling has not been presented.
- 3.5.60. This was explored in WQ MM 1.8(f) [PD-009] to which the Applicant responded [REP3-051] stating that ADDs are used as part of the suite of measures to prevent PTS by encouraging individuals in the immediate proximity of the piling site to leave the area in advance of piling commencing. The Applicant confirmed that piling at other locations would not influence the calculation of the ADD duration, as any simultaneous piling would not be within the instantaneous PTS ranges. The Applicant stated it is possible that animals could be exposed to noise levels that could cause cumulative PTS in relation to simultaneous piling, but this would not be mitigated by ADDs. The Applicant confirmed the modelling presented for simultaneous piling presents a worst-case spatial spread of locations and assumes the two piling operations start at the same time, which is considered highly unlikely. The Applicant confirmed this scenario is also for cumulative PTS, not instantaneous PTS and should simultaneous piling occur, an ADD would be required for both locations and the durations for each would be 7.6 minutes as calculated in the Draft Piling MMMP [APP-236] updated at Deadline 6 [REP6-218].
- 3.5.61. The Applicant provided an update to the Draft Piling MMMP at Deadline 4 [REP4-051] with various updates including an update to the wording of Commitment C-265.
- 3.5.62. This issue was explored again in WQ MM 2.9 [PD-012] to which NE responded [REP5-138] stating that its point regarding ADD duration remained unaddressed.
- 3.5.63. At Deadline 6 NE stated in its Risk and Issue log [REP6-296] that this part of issue C33 remained unaddressed. The Statement of Common Ground (SoCG) with NE [REP6-266] stated that whilst not agreed, concern regarding the calculation method for ADD duration was not material.

Bottlenose dolphin baseline and assessment

- 3.5.64. NR raised a concern in its RR [RR-265] and Risk and Issues Log at Deadline 1 [REP1-059a, point C14] that updated Management Unit (MU) boundaries were reviewed and published in March 2023 resulting in a change to the eastward extension of the Coastal West Channel (CWC) MU boundary for bottlenose dolphin and as such the Proposed Development which now overlaps this MU. NE advised that the Applicant must update its assessment relative to this updated MU.
- 3.5.65. The Applicant submitted an updated bottlenose dolphin assessment at Deadline 2 in the Marine Mammals Clarification Note [REP2-019] which stated that the marine mammal baseline report [APP-147] was drafted in 2021 prior to the MU change by the Inter-Agency Marine Mammal Working Group in 2023. The Applicant stated it recognised that this document was outdated at the time of submission into the Examination and confirmed that the clarification note [REP2-019] provided an

updated baseline characterisation for bottlenose dolphins and an updated quantitative impact assessment for piling to reflect the revised MUs and updated density estimates.

- 3.5.66. At Deadline 3 NE stated [REP3-081] that it noted the Applicant had specifically updated the bottlenose dolphin MU boundaries, to align with the latest MU report from 2023. NE also noted that the assessment now reflected that the Proposed Development area overlaps with the CWC MU, and that the assessment uses the appropriate values for this MU. NE advised that the Applicant has used the best and most recent published literature to characterise the density and abundance of bottlenose dolphin in the Proposed Development area and that this addressed comments C4, C28 (partially) and C29, and partially addresses comment C14 in the Risk and Issue Log [REP1-059a] updated at Deadline 6 to [REP6-296].
- 3.5.67. However, NE stated it did not agree with the Applicant's updated assessment conclusions that the impact on bottlenose dolphin would not be significant and advised further assessment and consideration of mitigation was needed.
- 3.5.68. This issue was discussed at ISH2 [REP4-072] and the Applicant confirmed [REP4-070] that in response to NE's recommendation, interim Population Consequences of Disturbance modelling for both the project alone and in combination was being progressed and would be provided as a quantitative assessment that would inform the magnitude score. The Applicant submitted a report on Bottlenose Dolphin Population Modelling at Deadline 5 [REP5-128] in response to action point 22 from ISH2 [REP4-074].
- 3.5.69. At Deadline 6 NE stated in its Risk and Issue Log for point C14 [REP6-296] that the Applicant had now undertaken population modelling to further evidence its assessment conclusion of no significant impact to the CWC bottlenose dolphin from piling and that NE considers the conclusion is reasonable, particularly as the Applicant has committed to mitigating all piling activities. NE stated in its Deadline 6 advice on marine mammals [REP6-289] that due to the Applicant's commitment to deploy DBBC as the minimum single offshore piling noise mitigation technology for all foundation installations, NE consider that the CWC bottlenose dolphin population would not be significantly impacted by Proposed Development piling activities but NE advise monitoring the effectiveness of noise abatement is carried out.
- 3.5.70. NE advised at Deadline 6 [REP6-289] that two remaining comments on the modelling should be addressed. These were a discrepancy in the calf survival rate used by the Applicant and that results of simultaneous/sequential piling were also presented, to demonstrate that the worst-case has been considered. NE added that it considered that on balance these two remaining unresolved matters in relation to the bottlenose dolphin are unlikely to affect the results of modelling in such a way that would lead to a significant impact being demonstrated.
- 3.5.71. NE stated [REP6-289] that new evidence may be published soon on the CWC bottlenose dolphin population, which may update some of the baseline and population parameters used in the assessment. NE advised that should this information be published before the start of piling, an updated pre-construction assessment based on the latest available evidence should be undertaken. NE also advise that monitoring is undertaken to validate the effectiveness of noise abatement in reducing the impact of disturbance to bottlenose dolphin. NE conclude that this matter remains unresolved and would need to be addressed in the final Offshore Monitoring Plan.

Harbour porpoise Cumulative Effects Assessment

- 3.5.72. Point C10 on NE's Risk and Issue log [REP1-059a] stated concern that not all relevant projects had been included in the CEA assessment for harbour porpoise disturbance. This was corrected by the Applicant in an updated version of the ES at Deadline 1 [REP1-004]. NE confirmed at Deadline 2 [REP2-041, point C10] that the revised list appears complete and the impact from the updated list had been revised. NE advised that the revised impact was higher than the number the Applicant had used as evidence of low likelihood of population level effects and advise 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 it had sufficient evidence to make an informed judgement.

The Vessel Management Plan

- 3.5.73. NE raised a request in its RR, [RR-265, point 5.8] for an outline Vessel Management Plan to be submitted into the Examination. This point was discussed at ISH1, [REP1-033]. At Deadline 1 the Applicant submitted Appendix 10 – Further Information for Action Point 42 - Proximity to Marine Wildlife [REP1-028] into the Examination, which detailed the mitigation measures relied upon within the assessment which the Applicant confirms would form part of the final VMP.
- 3.5.74. At Deadline 5 the Applicant confirmed in its response to WQ MM 2.6 [REP5-119] that the VMP would be enforced throughout all stages of the Proposed Development and that the draft DCO confirms in Schedules 11 and 12 Condition 11(1)(f) that, whilst submitted pre-construction, the VMP must cover the operational lifetime of the authorised scheme. NE stated in its Risk and Issue Log [REP2-041, point C7] that it was unsure how the commitment to develop parts of the VMP in line with the Proximity to Marine Wildlife document would be secured.
- 3.5.75. At Deadline 6, NE's Risk and Issues Log [REP6-289] recognised that the DML condition had been updated so that the VMP would incorporate a 'Working in Proximity to Wildlife in the Marine Environment Protocol' (Schedules 11 and 12 of the draft DCO) Condition 11(1)(f). However, the issue regarding assurance of implementation at all stages of the development remained unresolved in NE's Risk and Issue log [REP6-289] despite assurances from the Applicant [REP5-119].

Securing Commitments relating to Marine Mammals

- 3.5.76. NE raised a concern whether embedded measures related to marine mammals should be secured in the Recommended DCO. At Deadline 6 NE stated in its Risk and Issues Log [REP6-289, point C41] that it understood commitments are now secured in the standalone commitments register but that text in Commitment C-265 of the Marine Mammals ES chapter had not been updated to reflect the change in the Commitments Register. The ExA did not consider it necessary to question the matter further in the Examination.

Post consent monitoring for underwater noise in the Marine Mammal section of the Offshore In-Principal Monitoring Plan

- 3.5.77. NE's Risk and Issues Log at Deadline 4 [REP4-096, point C40] contained an unresolved issue in that the proposed post-consent monitoring outlined in the Offshore in Principle Monitoring Plan [REP3-047] did not include monitoring the effectiveness of the mitigation measures in reducing the impacts on marine

mammals to acceptable levels. The Applicant responded at Deadline 5 [REP5-119] in response to ExA question MM 2.10, to confirm that the Applicant is proposing to measure data from four of the first 12 foundations installed to understand whether the deployment of noise abatement or mitigation measures during installation of piled foundations for the Proposed Development result in underwater noise levels that exceed those predicted from the modelling undertaken in EIA. As the Applicant has committed to using DBBC for all piled foundation, the effectiveness of noise abatement systems (NAS) would be monitored. Commitment C-265 (DBBC) is detailed in the In Principle Sensitive Features Mitigation Plan (IPSFMP) [REP4-053] which is secured by Condition 11 (1)(k) of the DML within the Recommended DCO.

- 3.5.78. NE's Risk and Issues Log at Deadline 6 [REP6-289] continued to assert that monitoring only the first 4 piles was not sufficient. The MMO's cover letter at Deadline 6 [REP6-302] stated that it requests an enhanced monitoring programme be put in place for the Proposed Development, which could include obtaining measurements of the first eight piles or eight of the first 12 piles of each foundation type, to be installed. The MMO stated that it appreciates that this is more than is typically required but this is requested to compensate for the uncertainties regarding the effectiveness of a DBBC in waters greater than 50m depth [REP4-088 and REP5-146].

Unexploded Ordnance Clearance Marine Mammal Mitigation Protocol

- 3.5.79. NE provided advice to the Applicant into the Examination regarding consistency of information presented within the Unexploded Ordnance Clearance Marine Mammal Mitigation Protocol (UXO MMMP) and the piling MMMP, in its Risk and Issues Log [REP1-059a, points C34 to C39] applicable to the post-consent stage.
- 3.5.80. The MMO's responses to WRs submitted at Deadline 2 [REP2-035] stated it acknowledged the Applicant's creation of the Draft Unexploded Ordnance Clearance Marine Mammal Mitigation Protocol [APP -237] and that the Applicant is confident that appropriate mitigation can be secured. There were no outstanding issues in relation to the UXO MMMP in the SoCG with the MMO at the close of the Examination [REP6-241]. The ExA did not consider it necessary to question the matter further in the Examination.

Other issues

- 3.5.81. Other issues that arose during the Examination in relation to marine mammals were:
- Provision of draft European Protected Species (EPS) Licence Applications to NE in advance of the licences being required.
 - Disturbance from construction noise, vessels and to seal haul out sites.
 - Points from the French Authorities.
- 3.5.82. The ExA considers that these issues were adequately responded to by the Applicant at the various Examination deadlines.
- 3.5.83. To address the MMO's concerns, the Applicant submitted an updated Marine Plan and Policies Statement into the Examination at Deadline 4 [REP4-068], to which the MMO responded at Deadline 5 [REP5-146] stating they had no further comments.
- 3.5.84. The ExA considers that all other issues relating to marine mammals were responded to by the Applicant at the various Examination deadlines.

ExA's Findings

- 3.5.85. The ExA has considered the effects of the Proposed Development on marine mammals in the context of the policy framework set by the Overarching National Policy Statement for Energy (NPS EN-1 2011 and 2024), the National Policy Statement for Renewable Energy Infrastructure (NPS EN-3 2011 and 2024) and the South Marine Plan.
- 3.5.86. Section 5.3 of the NPS EN-1 2011 and section 5.4 of NPS EN-1 2024 set out policy considerations that are of relevance for biodiversity and ecology in general. Paragraphs 2.6.58 to 2.6.71 of the NPS EN-3 2011 and paragraphs 2.8.95 to 2.8.110 of EN-3 2024, provide offshore wind-specific biodiversity and ecology policy.
- 3.5.87. Mitigation requirements from the Applicant for biodiversity in general is set out in section 5.3 of NPS EN-1 2011.
- 3.5.88. In reaching a decision, the NPS EN-1 2011 and NPS EN-1 2024 state that the Secretary of State should:
- Take into account the benefits of nationally significant low carbon energy infrastructure, including any benefits for biodiversity conservation.
 - Ensure appropriate weight is attached to protected species; habitats and other species of principal importance for the conservation of biodiversity.
 - Take account of what mitigation measures may have been agreed between the applicant and NE or the MMO.
- 3.5.89. The assessment for marine mammals in NPS EN-3 2011 requires the Applicant to:
- Undertake an assessment for all stages of the lifespan of the Proposed Development.
 - Consult on the assessment methodologies to be undertaken in the early stages.
 - Provide any relevant data collected from post-construction ecological monitoring from existing operational offshore wind farms.
 - Set out the potential of the scheme to have positive and negative effects.
 - Consider that ecological monitoring is likely to be appropriate during the construction and operational phases to identify the actual impact so that, where appropriate, adverse effects can then be mitigated and to enable further useful information to be published relevant to future projects.
 - Where necessary the assessment of the effects on marine mammals should include details of: likely feeding areas; known birthing areas/haul out sites; nursery grounds; known migration or commuting routes; duration of potentially disturbing activity including cumulative/in-combination effects; baseline noise levels; predicted noise levels in relation to mortality, PTS and TTS; soft-start noise levels; and operational noise.
 - The Applicant should discuss any proposed piling activities with the relevant body. Where assessment shows that noise from offshore piling may reach noise levels likely to lead to an offence, the Applicant should look at possible alternatives or appropriate mitigation before applying for an EPS licence.
 - Consider mitigation in the form of careful design of the development itself and the construction techniques employed.
 - Consider that ecological monitoring is likely to be appropriate during the construction and operational phases to identify the actual impact so that adverse

effects can then be mitigated and to enable further useful information to be published relevant to future projects.

3.5.90. NPS EN-3 2024 strengthens policy requirements, adding that Applicants should:

- Refer to the most recent best practice advice originally provided by NE under the Offshore Wind Enabling Action Programme.
- Undertake a review of up-to-date research and all potential mitigation options presented as part of the application, having consulted the relevant JNCC mitigation guidelines.
- Refer to any relevant data that has been collected as part of post-construction ecological monitoring from existing operational offshore wind farms.
- Explain how decisions on siting, design, and impact mitigation are proportionate and well-targeted, referring to relevant scientific research and literature as appropriate.
- Have regard to guidance issued in respect of Marine Licence requirements and consult at an early stage of pre-application with the MMO.
- Assess collision risk, entanglement risk and barrier risk.
- Develop a Site Integrity Plan (SIP) or alternative assessment to allow the cumulative impacts of underwater noise to be reviewed closer to the construction date, when there is more certainty in other plans and projects.
- Consider 24 hour working construction practices to reduce the total construction programme and the potential for impacts and soft-start procedures during pile driving.
- Consider active displacement of marine mammals outside potential injury zones using equipment, such as ADDs and other mitigation including alternative installation methods, noise abatement technology, spatial/temporal restrictions on noisy activities and alternative foundation types.
- Develop an ecological monitoring programme to monitor impacts during the pre-construction, construction and operational phases to identify the actual impacts caused by the project and compare them to what was predicted in the EIA.
- Undertake a sufficient standard of monitoring to inform future decision-making by various methods including marine mammal observers and passive acoustic monitoring and implement an adaptive management process in regards to mitigation if impacts are shown to be greater than those predicted.

3.5.91. The assessment for marine mammals in NPS EN-3 2011 requires that in decision making the Secretary of State should:

- Take into account the effects of a proposal on marine ecology and biodiversity taking into account all relevant information made available to it.
- Be satisfied that the preferred methods of construction, in particular for the foundations are designed so as to reasonably minimise significant disturbance effects on marine mammals and unless suitable noise mitigation measures can be imposed by requirements to any development consent, the Secretary of State may refuse the application.
- Considers the views of the relevant statutory advisors.

3.5.92. The marine mammal section of the NPS EN-3 2024 adds that the Secretary of State should consider the conservation status of cetaceans and seals and be satisfied that cumulative and in-combination impacts on marine mammals have been considered.

3.5.93. The South Marine Plan is of relevance.

- 3.5.94. Other policy relevant to marine mammals is set out in Table 11-1 of the ES Volume 2 Chapter 11 Marine mammals [APP-052 updated at Deadline 6 [REP6-123] and the Applicant's Marine Plan and Policies Statement [REP4-068].
- 3.5.95. The ExA acknowledges the unresolved disagreement at the close of the Examination between the MMO/NE and the Applicant in relation to the sensitivity and the sensitivity scoring for marine mammals throughout the ES and disagreement over the risk of auditory injury (PTS) to marine mammals. NPS EN-3 2011, Paragraph 2.6.95, steers the Secretary of State to consider the views of the relevant statutory advisors. However, the MMO stated at Deadline 6 [REP6-302] that it does not believe this outstanding issue significantly alters the conclusions of the ES and that it has limited bearing on the overall assessment of impacts to these species. The MMO stated it is content that this issue is a non-material disagreement [REP6-302, paragraph 5.3.4]. The ExA also acknowledges that the MMO wanted this to be noted if the information and statement is ever referred to if the Secretary of State is minded to grant development consent.
- 3.5.96. The ExA is satisfied that the request for clarification of the worst-case piling scenario from NE and concern whether the worst-case had been modelled in the ES has been resolved in light of the Applicant's response in [REP6-275, question MM3.1]. In this response, the Applicant confirmed that the worse-case modelling parameters of 4 monopiles (2 monopiles in 2 locations) and 8 pin piles (4 pin piles in 2 locations) installed in a 24-hour period have been used in the modelling presented in the marine mammal quantitative underwater noise impact assessment, and underwater noise assessment technical report which informed the ES and that the update to the Marine Mammals, Chapter of the ES at Deadline 5 was a correction of a mistake in the MDS table. The Applicant confirmed the modelling, and subsequent assessment used the worst-case scenario and consequently, no further modelling was required. The ExA is satisfied with this explanation, subject to the imposition of additional wording into the DML in respect to the restrictions on hammer energy, as requested by NE and discussed below and considers this issue to be resolved.
- 3.5.97. In regard to NE's concern regarding the soft-start and ramp up duration of only 7.5 minutes, the ExA notes that Table 2-1 and Table 2-3 in the draft MMMP submitted at Deadline 6 [REP6-218] have been amended by the Applicant to state a soft start and ramp up duration of 30 minutes. The ExA notes that Table 2-2 and Table 2-4 states a worst-case ramp up scenario of four consecutive sets of 7.5 minutes at increasing energies which totals 30 minutes. Therefore, in light of the explanation provided by the Applicant in [REP3-051] and the update made to the draft MMMP at Deadline 6 [REP6-218], the ExA considers this matter to be resolved.
- 3.5.98. The ExA concurs with NE that the DML is not sufficiently tight regarding the specification of maximum hammer energies for monopile and pin pile foundations, as the wording in Condition 11(1)(c)(i) in the draft DCO [REP6-007] could allow the Undertaker to depart from the maximum hammer energy levels as assessed in the ES. Therefore, the ExA proposes the insertion of additional wording, similar to that accepted by the Secretary of State in the East Anglia One North Order, into the Recommended DCO to ensure that the maximum hammer energy levels do not exceed those identified in the ES. The ExA has proposed the following in Condition 11(1)(l) of the Recommended DCO:

"In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive the pile foundations must not exceed—

(a) 4,400kJ in respect of monopile foundations; and (b) 2,500kJ in respect of pin piles”.

- 3.5.99. The ExA is satisfied that the addition of the above condition would satisfy NE and resolve this issue.
- 3.5.100. In regard to the unresolved concern from NE regarding duration of ADD for simultaneous piling, the ExA notes that the Applicant has committed to deploy DBBC in Commitment C-265 [REP6-227] to deliver underwater noise attenuation for all foundation installations throughout the construction of the Proposed Development. The ExA notes that NE state in its Deadline 6 advice on marine mammals [REP6-289], that the Applicant has committed to the use of NAS year-round, and that this commitment further reduces the risk of significant impacts to bottlenose dolphin from piling.
- 3.5.101. The ExA is satisfied that the issue surrounding the soft-start and ramp up and worst-case for simultaneous piling has been resolved and that the calculation method for ADD whilst not resolved is not material. The ExA recognises that as the Applicant has strengthened the embedded mitigation for marine mammals through the commitment to use DBBC all year throughout construction of the Proposed Development in Commitment C-265 [REP6-227]. The ExA also recognises that the Applicant has stated in the IPMP [REP6-220] that it would use adaptive management, if necessary, in relation to the noise abatement technology use.
- 3.5.102. The ExA is satisfied that the measures in place contained within the Commitments Register [REP6-227] and Condition 11 of the Marine Licence at Schedule 12 of the draft DCO are such that negligible harm would result.
- 3.5.103. In relation to the adequacy and conclusions of the bottlenose dolphin baseline and assessment, the ExA considers this issue to have been resolved at the close of the Examination due to the Applicant’s commitment to deploy DBBC. Commitment C-265 [REP6-227] as the minimum single offshore piling noise mitigation technology for all foundation installations and that NE stated it considers that the CWC bottlenose dolphin population would not be significantly impacted by the Proposed Development piling activities [REP6-289]. The ExA agrees with the advice from NE at Deadline 6 [REP6-289] that the following is carried out:
- Monitoring the effectiveness of noise abatement on bottlenose dolphin addressed in the final Offshore Monitoring Plan.
 - An updated pre-construction assessment based on the latest available evidence should new information on bottlenose dolphin be published before piling commences.
- 3.5.104. NE stated in its Deadline 6 advice on marine mammals [REP6-289] that due to the Applicant’s commitment to deploy DBBC as the minimum single offshore piling noise mitigation technology for all foundation installations, NE consider that the CWC bottlenose dolphin population would not be significantly impacted by the Proposed Development piling activities but NE advise monitoring the effectiveness of noise abatement is carried out.
- 3.5.105. The ExA is satisfied that the above suggestions from NE are secured through Condition 11(1)(c)(i) in the draft Marine Licence in Schedule 12 of the draft DCO [REP6-007] which requires a construction method statement to include details of piling methods and Condition 11(1)(j) which requires a monitoring plan which accords with the offshore IPMP and is to detail proposals for pre-construction

monitoring surveys, construction monitoring, post-construction monitoring and related reporting. As per Condition 11, this would need to be approved in writing prior to the commencement of development. The ExA also recognises that the Applicant has stated in the IPMP [REP6-220] that it would use adaptive management, if necessary, in relation to the noise abatement technology use. As such, the ExA considers that MMO in consultation with the NE would have sufficient control over the whether the final construction method statement and monitoring plan is acceptable.

- 3.5.106. The ExA is content that given the explanation by the Applicant that the VMP must cover the operational lifetime of the authorised scheme and that this is secured in the DML, that this issue is resolved despite it appearing to remain open in the Risk and Issue Log from NE at Deadline 6.

- 3.5.107. Regarding the unresolved concern from both NE and the MMO regarding underwater noise monitoring for piling, the ExA notes that NPS EN-3 2024 states in paragraphs 2.8.295 and 2.8.296 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. Being consistent with the ExA's findings on fish and shellfish, the ExA agrees with the MMO that an enhanced monitoring programme be put in place for the Proposed Development, which could include obtaining measurements of the first eight piles (or eight of the first 12 piles), of each foundation type, to be installed, rather than the first four piles as proposed [REP6-302], if the MMO deems this still to be necessary at that time.

- 3.5.108. The ExA agrees with the MMO that enhanced monitoring of piled foundations is required but notes that the Offshore In Principle Condition Monitoring Plan [REP6-220] does not include the MMO required enhanced monitoring. Condition 11(j) of both Schedules 11 and 12 of the Recommended DCO requires a monitoring plan, which accords with the Offshore In-Principle Monitoring Plan, and is to detail proposals for pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting. As per Condition 11, this would need to be approved in writing prior to the commencement of development. As such, the ExA considers that the MMO would have sufficient control over the whether the final monitoring plan is acceptable. On this basis the ExA is satisfied that the condition as worded would ensure the enhanced monitoring would occur.

- 3.5.109. As the Applicant is confident that appropriate mitigation can be secured in the UXO MMMP and there were no outstanding issues in relation to the UXO MMMP in the SoCG with the MMO at the close of the Examination [REP6-241], the ExA is content that the advice given by NE [REP1-059a, points C34 to C39] can be implemented post-consent in the final MMMP.

- 3.5.110. Considering evidence put forward in the Examination, the ExA is content that all other issues including the provision of draft EPS Licence Application to NE in advance of the licence being required, securing of commitments relating to marine mammals, disturbance from construction noise, vessels and to seal haul out sites and points raised by the French Authorities were resolved at the close of the Examination.

Conclusions

- 3.5.111. The ExA examined all the Applicant's submitted assessments and considered all the issues raised during the Examination related to marine mammals.
- 3.5.112. The ExA considers that whilst the majority of issues have been resolved and the Applicant had committed to DBBC [C-265 REP6-227] as an embedded mitigation measure throughout construction activities, the Applicant has not fully followed advice from the SNCBs (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.
 - 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.
- 3.5.113. 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 DML within the Recommended DCO.
- 3.5.114. The ExA concurs with ES Chapter 11 [REP6-123] that the significance of effect from the Proposed Development on marine mammals, taken as a whole, would be Minor Adverse and therefore Not Significant, caused by the temporary construction activities.
- 3.5.115. The ExA concludes that the Proposed Development is in accordance with the relevant sections of NPS EN-1 2011 and NPS EN-3 2011. The ExA is satisfied that all relevant legislation, other national policies and strategies, and relevant local policies are complied with, that adequate mitigation is secured in the Recommended DCO regarding marine mammals and there are no other important or relevant considerations.
- 3.5.116. Subject to the inclusion of proposed amendments to Condition (11)(j), the ExA attaches a Little Negative weight to marine mammals matters in the planning balance.
- 3.5.117. Under the Transitional Arrangements, policy compliance with NPS EN-1 and EN-3 2024 is not required. The ExA is aware that NPS EN-3 2024 paragraph 2.8.221 requires Applicants to develop an ecological monitoring programme to monitor impacts during the pre-construction, construction and operational phases to identify the actual impacts caused by the project and compare them to what was predicted in the EIA.
- 3.5.118. The ExA has proposed an amendment to Condition 11(j) of both Schedules 11 and 12 of the DML, which is contained within the Recommended DCO, which requires a monitoring plan, which accords with the Offshore In-Principle Monitoring Plan, and is to detail proposals for pre-construction monitoring surveys, construction monitoring, post- construction monitoring and related reporting. This addition would address this additional requirement and therefore having regard to NPS EN-1 and EN-3 2024, the ExA considers there if no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.6. FISH AND SHELLFISH

The Applicant's Case

- 3.6.1. It is Chapter 8 of the ES (Fish and Shellfish Ecology) which was originally submitted with the application [APP-049] with Figures for this Chapter [APP-081]. The Chapter and Figures have been updated, now reference [REP6-179] and [REP6-191] respectively.
- 3.6.2. The ES assessment takes into account relevant legislation, such as the Marine and Coastal Act 2009 and the Wildlife and Countryside Act 1981, together with the policies of NPS EN-1 and NPS EN-3. Of a more regional policy remit is the South Inshore and South Offshore Coast Marine Plan (2018) [REP6-179 – Table 8-1 to Table 8-3].
- 3.6.3. The ES explains that the spatial scope of the assessment is the fish and shellfish Study Area is as defined by the secondary impact ZOI. The ES states that the ZOI has been informed by the tidal excursion extent and coastal processes modelling undertaken to inform the previous Rampion 1 OWF and the likely extent of potential sediment plume impacts described by the tidal excursion buffer [REP6-179, Section 8.4]. Furthermore, the temporal scope of the assessment of fish and shellfish ecology is the entire lifetime of the Proposed Development, which covers the construction, operation and maintenance, and decommissioning phases.
- 3.6.4. Potential receptors have been identified in Table 8-7 of the ES [REP6-179]. This includes many species of fish and shellfish. The fish types include mobile species, elasmobranch and migratory species. The species most discussed in the Examination were all within the mobile fish species receptor group of the Table.
- 3.6.5. Following the identification of the potential receptors the ES in Table 8-8 sets out the potential effects on these fish and shellfish species through the distinct phases of the Proposed Development [REP6-179]. Activities or impacts having a potential effect include the following:
- Mortality, injury, behavioural changes and auditory masking arising from noise and vibration.
 - Direct disturbance resulting from the installation of the export cable.
 - Direct disturbance resulting from construction within the array.
 - Temporary and localised increases in Suspended Sediment Concentrations (SSC) and smothering.
 - Direct and indirect seabed disturbances leading to the release of sediment contaminants.
 - Long-term loss of habitat and increased hard substrate and structural complexity due to the presence of turbine foundations scour protection and cable protection (CP).
 - Electromagnetic Field (EMF) impacts arising from cables.
 - Direct disturbance resulting from maintenance within the array area and the offshore ECC.
 - Direct disturbance resulting from the removal of the export cable.
 - Direct disturbance resulting from decommissioning within the array.
- 3.6.6. Table 8-8 of the ES [REP6-179] provides full details and an explanation of the potential effects.

- 3.6.7. In collating the data for the baseline of the assessment there was a desk study which used a range of sources, such as Fisheries Sensitivity Maps in British Waters, The International Herring Larvae Surveys (IHLS), the Rampion Offshore Wind Farm Year 1 Post-Construction Fish Monitoring Report (OEL, 2020a). Table 8-10 of the ES [REP6-179] provides the full list.
- 3.6.8. The Applicant also explains that *“no additional fish and shellfish surveys were deemed to be required for the Proposed Development EIA, however, other site specific surveys undertaken for Rampion 2 have provided important additional ground discrimination information and interpretation, which has been used to refine habitat mapping across the Study Area. A site-specific geophysical survey was undertaken between July and August 2020 across the offshore proposed Order Limits.”* [REP6-179, Paragraph 8.5.6].
- 3.6.9. The data collected informed the ES on various species, such as herring and sandeel spawning grounds, plus identifying species of commercial or conservation importance [REP6-179].
- 3.6.10. When setting the baseline for species of conservation importance the ES explains that on account of the presence of nature conservation designations within the Study Area, and the potential presence of features of interest of which the sites are designated, short-snouted seahorse, European native oyster, blue mussel beds and black seabream have been taken into consideration in the fish and shellfish assessment. The marine conservation designations relevant include Marine Conservation Areas (MCZ), including Kingmere MCZ (nesting black seabream are a protected feature of this MCZ), and Selsey Bill and the Hounds MCZ (short-snouted seahorse are a protected feature of this MCZ), for example. Table 8-11 of the ES [REP6-179] sets out the marine nature conservation designations in detail.
- 3.6.11. The ES [REP6-179] does, however, recognise that the fish and shellfish baseline characterisation described represents a “snapshot” of the present fish and shellfish assemblages of the English Channel, within a gradual and continuously changing environment.
- 3.6.12. Table 8-12 of the ES [REP6-179] includes the maximum parameters and assumptions for each activity/impact. For example, for noise and vibration impacts, the maximum spatial design scenario would equate to the greatest effect from subsea noise at any one-time during piling. The maximum temporal design scenario is explained by the Applicant to represent the longest duration of effects from subsea noise. This scenario is assumed by the Applicant in the ES to be the use of pin-pile foundations, which could result in a longer duration of piling per foundation due to the additional number of pin piles required. Table 8-12 provides the full list.
- 3.6.13. Residual effects would be those after factoring in embedded mitigation for the impacts. Table 8-13 [REP6-179] includes a list of all commitments made by the Applicant (updated through the course of Examination) and included within the Commitment Register [REP6-227]. Examples include the following:
- C-41 - The subsea inter-array cables will typically be buried at a target burial depth of 1m below the seabed surface. The final depth of the cables will be dependent on the seabed geological conditions and the risks to the cable (e.g. from anchor drag damage).
 - C-265 - DBBC will be deployed as the minimum single offshore piling noise mitigation technology will be utilised to deliver underwater noise attenuation for

all foundation installations throughout the construction of the Proposed Development where percussive hammers are used in order to reduce predicted impacts to: sensitive receptors at relevant MCZ sites and reduce the risk of significant residual effects on the designated features of these sites; spawning herring; and marine mammals.

- C-273 - A seasonal restriction will be put in place to ensure offshore ECC installation activities (including construction and installation, preparatory works during cable installation, UXO clearance, preventive or scheduled maintenance, inspections and decommissioning) are undertaken outside the black seabream breeding period (1 March - 31 July inclusive) to avoid any effects from installation works on black seabream nesting within or outside of the Kingmere MCZ. This does not apply to emergency work required to maintain the operation, safety and integrity of the infrastructure.
- C-280 - Commitment that no piling will occur in the piling exclusion zones during the seabream breeding period (March-July) which will be defined by the modelling in the Final SFMP.

3.6.14. The Commitments would be secured through Conditions within the DML which is contained within the Recommended DCO. These particularly include Conditions No 1 (Design Parameters), No 11 (Pre-Construction Plans and Documentation), No 16 (Pre-Construction monitoring and surveys), No 18 (Post-construction monitoring), No 21 (Piling) and No 25 (Report of impact pile driving). Conditions No 11 of these Schedules notably include the requirement for the Applicant to submit for approval by the MMO a final Project Environmental Management Plan (PEMP), a Monitoring Plan, and a final SFMP, all of which are relevant to fish and shellfish.

3.6.15. As set out in Table 8-30 of the ES [REP6-179] in the Summary of Assessment of Residual Effects the ES concludes that no activity or impact would result in a residual effect greater than Minor Adverse, which is not significant. This is following a consideration of cumulative effects and also the embedded mitigation. It should be noted that without the mitigation some impacts would be potentially significant in EIA terms. For example, for the impact of “mortality, injury, behavioural changes and auditory masking arising from noise and vibration” during the construction phase, for black seabream the magnitude of impact would be moderate with medium level sensitivity. For breeding seahorses, the magnitude of impact would be moderate, but the sensitivity would be high. See Table 8-30 of the ES [REP6-179] for more details.

Examination Issues

3.6.16. The main issues in the Examination were the piling noise effects on:

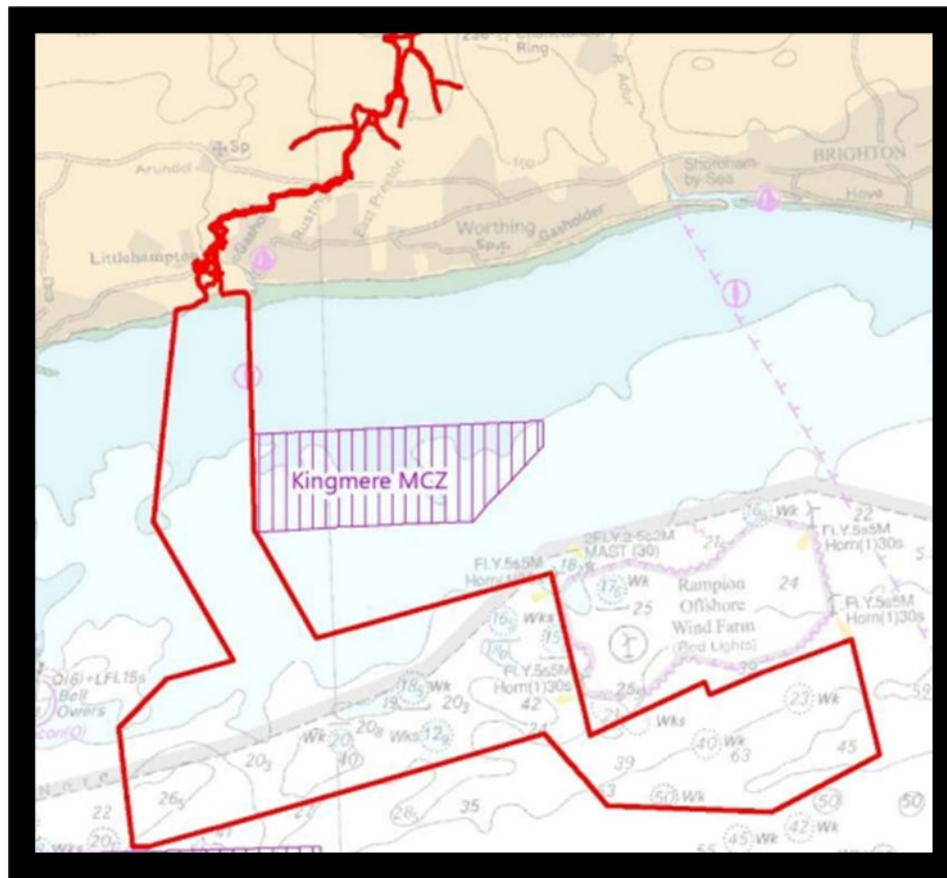
- Black Seabream.
- Seahorses.
- Herring.
- Sandeel.

Black seabream

3.6.17. To provide more detail on the issue of black seabream, the IPSFMP submitted with the application [APP-239] covers both the Kingmere MCZ and the black seabream species. This included how the Applicant considers mitigating this fish species from noise from the piling of the WTGs. This document has been updated through the Examination period, with the last version submitted at Deadline 5 [REP5-082].

- 3.6.18. With regard to Kingmere MCZ the IPSFMP [REP5-082] states that although the initial site selection for the Proposed Development (including the offshore ECC area) has ensured avoidance of any direct overlap with the Kingmere MCZ, the site is in proximity to the Proposed Development area. Therefore, it is subject to potential indirect effects from construction activities. The IPSFMP sets out that the Kingmere MCZ is designated for the following marine features:
- Black Seabream (*Spondyllosoma cantharus*).
 - Moderate energy infralittoral rock and thin mixed sediment.
 - Subtidal chalk.
- 3.6.19. Particular to black seabream the IPSFMP [REP5-082 Table 2-1] includes the Conservation Objectives set by NE as the following:
- In relation to black seabream spawning habitat to maintain the habitat in favourable condition if already in favourable condition; or bring into favourable condition if not already in favourable condition.
 - To ensure the black seabream population occurring in the MCZ be free of the disturbance of a kind likely to significantly affect the survival of its members or their ability to aggregate, nest, or lay, fertilise or guard eggs during breeding.
 - For the spawning habitat of black seabream within the MCZ, favourable condition means that the habitat is of sufficient quality and quantity to enable individuals of this species using the habitat to survive, aggregate, nest, lay, fertilise or guard eggs during breeding.
- 3.6.20. The following is from Figure 2.1 of the IPSFMP [REP5-082] and shows the Order Limits in relation to the Kingmere MCZ.

Figure 9 – Order limits in relation to the Kingmere MCZ



- 3.6.21. The IPSFMP [REP5-082] explains that black seabream are recognised as a significant interest to commercial and recreational fishers with spawning grounds within the region. The Applicant stated that black seabream are known to nest in areas around the south coast of the UK with extensive nesting grounds off the West Sussex. The primary driver for the Applicant's noise mitigation plan is avoidance of significant effects on noise sensitive species during breeding/nesting periods.
- 3.6.22. Firstly, the IPSFMP [REP5-082] explains that there would be a seasonal restriction for cable installation works, which would ensure that offshore ECC installation activities would be undertaken outside the black seabream breeding period (March-July) to avoid any effects from installation works on active black bream nesting. This is committed to in the Commitment Register [REP6-227] with C-273.
- 3.6.23. With regard to piling noise mitigation, a key component for black seabream is the use of piling exclusion zones during the sensitive nesting period. Firstly, the IPSFMP [REP5-082] sets out the noise abatement measures. The Applicant stated that noise abatement in the form of DBBC would be in place for the entirety of the piling operations with additional measures put in place during the black seabream breeding season. DBBCs are described by the Applicant [REP5-082] as the following:

Bubble curtain systems solution pump compressed air through a perforate hose / pipe laid in a circular configuration on the seabed. The compressed air is then released from the seabed and creates a 'curtain' of rising bubble rings, also known

as a pneumatic barrier, which is used to attenuate the propagation of sound waves through the water column, thus reducing noise emissions. (Paragraph 5.3.7)

- 3.6.24. The Applicant considers that the DBBC would enable a precautionary assumption of 15 decibel (dB) reduction in source level noise.
- 3.6.25. The Applicant has also committed to the use of a combination of measures, comprising the DBBC as the principal measure, together with an additional noise abatement measure, which would be selected based on the most appropriate equipment available at the time of construction. Examples include hammer noise mitigation. With a combination of methods throughout the black seabream nesting period up to 20dB noise reduction could be achieved, according to the Applicant [REP5-082].
- 3.6.26. However, ExA understands that to ensure an appropriate piling exclusion zone there should be an understanding of the noise thresholds which would affect the behaviour or cause a disturbance to black seabream. For this, the Applicant applies a zoning exercise with what it considers to be a precautionary disturbance threshold of 141dB. This research was not conducted on black seabream, but on seabass which the Applicant considers to be a fish species of the same order as black seabream and therefore suitable as a proxy species. The Applicant explains that the seabass in the study exhibited an initial reaction to impulsive noise at levels of 141dB SELss (sound exposure level – single strike), noting that the response was short lived, and that there was no evidence for any consistent sustained response at levels up to 166dB SELss [REP5-082, Paragraph 5.3.29].
- 3.6.27. The Applicant also claims that [REP5-082] the use of 141dB threshold is supported by also considering the existing background (ambient) soundscape at Kingmere MCZ. The Applicant explained that from studies reviewed, an increase of 30dB above ambient noise levels represents an appropriate benchmark. Using Rampion 1 OWF figures the Applicant calculated that 30dB above the ambient noise at the site would be 143 to 150dB [REP5-082, Paragraph 5.3.31]. Furthermore, from a 15 day 2022 noise monitoring survey at Kingmere MCZ the typical minimum background noise level during low tidal flow periods was 103 dB, whereas during periods of high tidal flow the background level commonly exceeded 120 dB. Peak noise levels naturally occurring were normally in excess of 140dB and exceeded 160dB at multiple times on any given day.
- 3.6.28. Using the data explained above, the following piling exclusion area was proposed by the Applicant (represented by the angled red hatched lines):

Figure 10 – Proposed Piling Exclusion Zone



- 3.6.29. This piling exclusion area would remain in place for 1 March to 30 June of any year where piling is taking place. As such, through this March to June period, piling would therefore only be undertaken in the eastern part of the offshore array area, and subject to mitigation using the combination of DBBC and another noise abatement measure. Additionally, piling in the eastern area would commence in the part of the array furthest from the Kingmere MCZ [REP5-082, Paragraph 5.3.49].
- 3.6.30. In July, if piling is to be undertaken in the western part of the offshore array, foundation installation would again be conducted using the combination of DBBC and another noise abatement measure. Activities would also be subject to a sequencing plan, such that piling in July would commence at locations of the western part of the array furthest from the Kingmere MCZ [REP5-082, Paragraph 5.3.50].
- 3.6.31. For the rest of the year the Applicant would continue to mitigate piling noise with the DBBC noise mitigation technology when piling was being undertaken [REP5-082, Paragraph 5.3.51].
- 3.6.32. For these reasons, the Applicant considers that the mitigation proposed would be sufficient to avoid the risk of behavioural response in black seabream during its spawning and nesting phase, and that compliance with such restrictions would ensure that the Conservation Objectives for black seabream as a feature of the Kingmere MCZ would not be hindered [REP6-233].
- 3.6.33. The above is a detailed explanation of the Applicant's approach to the black seabream issue. **However**, NE in its RR [RR-265] raised concerns with the Applicant's conclusions on this matter. NE stated that it did not agree with the Applicant's conclusion that there would be no significant risk of hindering the

achievement of the conservation objectives in relation to the black seabream feature of Kingmere MCZ due to underwater noise generated from piling. As a consequence, NE advised that it considered that piling activities from 1 March to 31 July inclusive had the potential to hinder the conservation objectives of Kingmere MCZ in relation to black seabream, and therefore a full seasonal restriction is needed. This piling restriction would be 1 March to 31 July inclusive (Paragraph 5.12).

- 3.6.34. NE advised in its RR that there are two key issues with the mitigation proposed relating to black seabream in the Kingmere MCZ. The first being that NE did not agree that the threshold of 141dB, as proposed by the Applicant, was a sufficient reduction in noise impacts within the MCZ to prevent behavioural impacts on black seabream. Secondly, NE advised that sufficient evidence had not been provided to demonstrate that the mitigation measures presented, including noise abatement measures, would be sufficiently effective to prevent noise effect impacts on black seabream (Paragraph 5.14). However, the Applicant did not agree to such a restriction and stated that such a restriction would have significant implications for the construction of the Proposed Development, particularly the construction schedule [REP6-233]
- 3.6.35. In terms of noise effects on black seabream, NE stated that noise disturbance could affect breeding success and therefore the population size within Kingmere MCZ, for example by black seabream abandoning territories prior to egg laying, or by scaring male black seabream off nests leaving eggs open to predation/sedimentation [REP2-040]. The Applicant also confirmed that the risk is that the males could leave for a time or completely abandon the nest due to the piling noise [REP1-033].
- 3.6.36. The Applicant noted that in its view the evidence suggested black seabream might show strong site fidelity, so it is likely they come back to the same sites each year. The Applicant stated that it is unlikely that the construction activities would deter them from returning in future years [REP1-033]. As a result, any impact would just be in that single season. NE advises that individual black seabream are known to return to particular sites in consecutive years, but that there is insufficient evidence to determine whether disturbance from piling noise would prevent them returning [REP2-040].
- 3.6.37. The ExA considered these issues thoroughly in the Examination and the main points and issues in dispute are set out below.

Behavioural threshold for black seabream

- 3.6.38. NE in its RR [RR-265] stated that it does not support the use of 141dB re 1µPa (micropascal) SELss as a threshold for black seabream behavioural disturbance and it does not agree that the threshold is highly precautionary. NE goes on to explain that the Applicant's methodology cannot be used to predict behavioural responses of fish to piling noise for differing reasons, including the limitations of the study the Applicant used (RR-265, Point 35). NE [RR-265] also expressed that the use of a seabass study is not suitable for black seabream. This remained a major area of dispute between the Applicant and NE through the Examination.
- 3.6.39. NE explained that seabass do not exhibit demersal nest guarding or the breeding behaviours protected by Kingmere MCZ. Furthermore, though seabass is in the same hearing category as black seabream these fish are extremely diverse and exhibit complex behaviours in response to a changeable environment. NE also

stated that it has advised against this approach throughout the evidence plan process (RR-265, Point 35).

- 3.6.40. NE further clarified its position by stating that any behavioural threshold must be specific to the species (black seabream) and that at Deadline 1 it appeared to NE that it was unlikely a threshold could be agreed [REP1-059a – E34]. NE advised that there is no scientifically robust way of determining a suitable species-specific noise threshold that could be considered to avoid significant disturbance [REP2-040].
- 3.6.41. The Applicant submitted the *Black Seabream Underwater Noise Technical Note and Survey Results – Revision A* [PEPD-023]. The Applicant set out [REP2-026] that this document [PEPD-023] demonstrates that the baseline measurements demonstrate that the introduction of noise at 141dB SELss would not be a substantial deviation from the noise levels that already do occur at times and should therefore not be considered extreme or unacceptable.
- 3.6.42. NE advised that from the evidence submitted it was apparent that background noise levels rarely reach the thresholds proposed, and when they occasionally do it is only for short periods of time. On this basis NE advised that piling would represent a notable increase from baseline conditions during the black seabream breeding season (March-July), and therefore the data presented did not support the Applicant's assertion that there would be no impact on breeding black seabream under prolonged exposure to 148 and 142dB SPL_{RMS} (Sound Pressure Level - root mean squared) conditions [REP1-059].
- 3.6.43. The MMO also stated in their RR [RR-219] they had concerns regarding the likelihood of significant impacts to black seabream during the phases of the Proposed Development. The MMO further stated that there was no conclusive agreement on a noise threshold to use. However, the MMO did not consider the use of 141db to be sufficiently precautionary and maintained that modelling should be done based on 135dB SELss. Also, the MMO suggested that it may be suitable to use an audiogram for red seabream as a proxy for black seabream.
- 3.6.44. In the Applicant's response to NE's RR it noted that NE does not support the use of the 141dB threshold to inform the zoning approach to mitigation [REP1-017]. However, the Applicant considered 141db a suitably precautionary threshold as it is based on a short-lived startle response observed in seabass. The Applicant stated that behavioural disturbances are considered to be long term changes in behaviour and distribution, and should not include effects on single animals, or small changes in behaviour such as startle responses or minor movements. The Applicant also considers the use of a defined threshold as aligning with other similar Offshore Wind applications, such as Hornsea Four OWF Application and others [REP1-017, Page 286 and 287].
- 3.6.45. At Deadline 3 the Applicant reiterated its support of the 141db threshold [REP3-051] in response to ExA WQs. In response to WQ FS 1.4 [PD-009] the Applicant stated the following:
- “As reported by Kastelein et al. (2017), the thresholds are based on startle responses of seabass, which could be a brief change in swimming speed, direction, or body posture, in at least one of a group of four fish, with a very limited time duration, as opposed to a full abandonment of the ensonified area. Furthermore, there was no evidence of any consistent sustained response to sound exposure by*

the study animals (changes in school cohesion, swimming depth, and speed) at levels up to 166dB SELss.”

- 3.6.46. As further explained by the Applicant the observed effects from underwater noise from pile driving on seabass were so minor that there would unlikely be any adverse effects on black seabream ecology (such as sustained disturbance to nesting behaviours). Therefore, this indicated to the Applicant that this noise level would not have any potential to trigger a significant effect on the black seabream population within the MCZ and nor is it even likely to have an individual effect on breeding success. Also pointed out by the Applicant, the 141dB SELss threshold used would be the maximum noise level at the boundary of the Kingmere MCZ, and only at the maximum blow energy. No feature of the MCZ, according to the Applicant, would be expected to be exposed to this level of noise impact and therefore it remains conservative and sufficient to ensure no significant effects to the black seabream feature of the MCZ [REP3-051 – Response to Question FS 1.4].
- 3.6.47. The Applicant regarded the use of an alternative threshold of 135db as not applicable for the Proposed Development as this was based on studies in a quiet loch and not applicable to a busier sea area (such as the English Channel) with has much higher background noise levels [REP3-051 – Appendix H]. However, the Applicant has set out piling mitigations as defined using a threshold of 135dB SELss for behavioural responses and compared them with the 141db (REP3-051, Appendix H – Figures H-1 to H-4). The Applicant noted from this comparative exercise that even with noise abatement reductions of 20db the use of a 135db threshold would result in a significantly larger piling exclusion zone [REP3-051 – Appendix H, Page 222].
- 3.6.48. On the use of red seabream as a proxy instead of seabass, the Applicant responded to ExA WQ FS 1.14 stating that the critical requirement to determine a suitable threshold is the level of noise that would lead to a disturbance sufficient to cause abandonment of nests. The Applicant stated that this value of disturbance is not known for any species of seabream, and so the Applicant has recommended disturbance values for seabass as the best alternative.
- 3.6.49. In response to the possible use of red seabream as a proxy for black seabream NE did not support this. NE explained that whilst red seabream is in the same family as black seabream they are a different genus and species. NE also noted that no information has been presented to robustly evidence that their hearing ability would be the same [REP3-086 – Response to question FS 1.14]. Furthermore, in response to use of an alternative 135db threshold NE also dismissed this as an option. NE stated that there is insufficient evidence to support a threshold being established below which behavioural impacts on black seabream would be avoided [REP4-097]. Therefore, NE maintained its advice from the RR [RR-265] that there is not a suitable threshold that can be drawn from the literature that relates specifically to disturbance of the spawning and nesting behaviours of black seabream which Kingmere MCZ is specifically designated for. NE continued to advise that a full piling restriction from March to July is the only measure that would prevent the conservation objectives of Kingmere MCZ being hindered [REP4-097, Response to question Q3b-2].
- 3.6.50. The MMO responded [REP4-088] to the information provided by the Applicant at Deadline 3, particularly that contained within Appendix H [REP3-051]. The MMO noted that the use of 135db would result in a need for a larger piling exclusion zone, as expected. The MMO stated that the piling exclusion modelling presented in

Appendix H demonstrated that, when an appropriate behavioural response threshold is modelled (135db), the Applicant cannot realistically implement its proposed zoning approach to allow piling to be carried out during the black seabream spawning season (Paragraph 4.3.10). The MMO also asserted that an appropriate threshold still needs to be agreed between all parties [REP4-088], such as including NE.

- 3.6.51. There was no substantive movement from the parties of the issue of the use of the 141db threshold by the Applicant throughout the Examination. NE stated that it retained its position that it is not possible to establish a threshold for black seabream below which behavioural impacts that could hinder the conservation objectives of the site would not occur. In the SoCG between NE and the Applicant, at Point NE36, NE stated that it does not support a behavioural threshold being derived for black seabream from studies using proxy species or research using playback sound or based on captive fish (rather than in the wild). NE does not agree with the use of the thresholds proposed by the Applicant for black seabream disturbance [REP6-227]. As NE set out in its response to ExA WQ Q3b-3r [PD-011] its advice is that a proposal based on the thresholds of either 135dB or 141dB would not ensure that the conservation objectives of Kingmere MCZ would not be hindered due to behavioural impacts on black seabream, with there not being a suitable threshold [REP4-097]. NE continued to advise against a zoned approach to piling being implemented [REP4-092]. This remained the case at the close of Examination.
- 3.6.52. In the MMO's final PADS [REP6-301], it confirmed that a behavioural noise threshold of 135dB is required to protect sensitive features against underwater noise impacts associated with the Proposed Development. MMO did not consider a SELss of 141dB used for a 44cm captive seabass to be an appropriate or conservative threshold. MMO considered that the issue of black seabream underwater noise disturbance threshold is still outstanding and the MMO considers this a material issue at the close of Examination [REP6-301].
- 3.6.53. In the Applicant's Closing Statement [REP6-233] it maintained that 141db was an appropriate threshold to avoid the risk of behavioural response in black seabream during its spawning and nesting phase, and that compliance with such would ensure that the Conservation Objectives for black seabream as a feature of the Kingmere MCZ would not, therefore, be hindered. The Applicant also considered that the proposed 141dB SELss threshold to be appropriately precautionary for a non-specialist hearing group of fish and represents the best available data drawn from appropriate proxy species.

Level of black seabream mitigation needed for July

- 3.6.54. The Applicant has proposed lesser restrictions for the month of July, if piling is to be undertaken in this month. The Applicant explained the reasons for this, stating that it considered that March to June is the key sensitive period based on data that has been collected for the sites. The Applicant went on to explain that this data showed that in the period of June black seabream males were found on 89.4% of nests, which reduced to 5% by the 10th of July and 0% by the end of July. As a result, it was considered by the Applicant that the noise abatement techniques to be employed, including the scheduling and the zoning, as well as other mitigation measures, are suitable for that period given the lower risk for July [REP1-033].

- 3.6.55. NE, in response to ExA WQ Q10-1 [PD-008] regarding the July mitigation proposals, stated that there is some inter-annual variability in the exact timings of arrival and nesting, however the spawning season as defined in NE's conservation advice is March to July inclusive. NE also explained that in Kingmere MCZ, nesting into July has been observed within data collected by the aggregate's companies in 2019, 2020, 2021 and 2022 [REP2-040].
- 3.6.56. NE explained the factors determining the variability of the nesting seasons, including the level of nesting by black seabream in July. NE stated that these factors are not well understood and may include water temperature, light penetration, day length, moon phase, plankton composition, the co-occurrence of neighbouring nests, and storm events. Due to these factors, which can vary considerably in any given year, they are not readily predictable in advance [REP2-040].
- 3.6.57. The MMO also raised concern with the proposed zonal piling works proposed in July. The MMO in its RR [RR-219] stated that as it has clear evidence that black seabream continues to spawn and maintain their nests into and during July, the MMO must consider that July is part of the spawning period. Therefore, according to the MMO, it is necessary that any mitigation applied to the Proposed Development must include July.
- 3.6.58. In response to ExA WQ 1.7 [PD-009] regarding July seabream nesting, the Applicant reiterates, that the factors that can influence this variability are not well understood. The Applicant clarified that it cannot therefore speculate whether there could be a greater number of active black seabream nests in future July months [REP3-051].
- 3.6.59. The Applicant confirmed that the data which exists to inform the Applicant assessment of black seabream nesting activity suggests that the density of nests in July is far lower than in the preceding months and so it seemed unlikely that there would be a higher concentration of nests at this time in future years. However, the Applicant acknowledged the inter annual variability in July. For that reason, the Applicant has proposed mitigation measures to address the risk in July which it anticipated would be effective and would mean that the piling activities would not hinder the conservation objectives of the MCZ for that month [REP4-072, Point 3b].
- 3.6.60. The Applicant also noted the change to the breeding season as defined by NE is relatively recent and was based on some observations of repeat spawning, and that the data which the Applicant has was indicative of substantially lower amounts of spawning occurring in July. The Applicant explained that July is a critical month for construction of the Proposed Development, and it is only this month that the Applicant was proposing to carry out piling activities in accordance with the zoning plan in the western part of the array area [REP4-072, Point 3b].
- 3.6.61. In response to the ExA's WQ Q3b-1 [PD-011], NE acknowledged that aggregates survey data to date does show lower numbers of active nests in July. However, black seabream are afforded the same protection under the conservation objectives regardless of the number of individuals/active nests. NE stated that spawning had been previously observed at Dorset black seabream nesting sites in July, after nests earlier in the year were washed out. NE's advice remained that the conservation objectives of the MCZ would equally be hindered by underwater noise impacts from piling in July, as in March-June [REP4-097].

- 3.6.62. MMO in its Deadline 6 written submission [REP6-302] explained that a fundamental element of the Applicant's zoning plan is that the month of July is still treated separately from March-June, despite both the MMO and specialists at NE advising and maintaining that the black seabream breeding season is from 1 March to 31 July inclusive. There is clear evidence, according to the MMO, that black seabream will continue to spawn and maintain their nests into and during July, and therefore July must be considered as an equally important part of the spawning and nesting period, and not less important than the March-June period [REP6-302, Paragraph 8.1.3].
- 3.6.63. This matter remained unresolved at the close of Examination, as is evidenced by point NE34 of the SoCG between the Applicant and NE, which is concluded as Not Agreed [REP6-266].

Noise Abatement Systems (NAS) and monitoring

- 3.6.64. In the RR submitted by NE [RR-265] it stated that *"in relation to reducing impacts on MCZ features to an acceptable level, it needs to be demonstrated that the mitigation will be sufficient given the environmental conditions in the Rampion 2 array to reduce noise to an agreed level within the MCZ's. Environmental conditions that could affect efficacy, include factors such as depth, the speed of local currents, wave height, wind speed and geology. We advise this information needs to be submitted into the Examination."* (Point 24)
- 3.6.65. Furthermore, NE stated [RR-265] that there was not sufficient evidence provided to demonstrate that the mitigation measures presented, including noise abatement measures, would be sufficiently effective to prevent behavioural impacts on black seabream (Paragraph 5.14).
- 3.6.66. As set out in the In Principle Sensitive Mitigation Plan [REP5-082] noise abatement in the form of DBBC would be in place for the entirety of the piling operations with additional measures put in place during the black seabream breeding season. The DBBC has a precautionary assumption 15dB reduction in source level used according to the Applicant. However, during the black seabream breeding season there would be two forms of noise abatement used. The In Principle Sensitive Mitigation Plan sets out that *"In consideration of the site characteristics and noise abatement levels it is apparent that up to 20dB noise reduction can be achieved (within depths of $\leq 40m$, and other environmental parameters), through the use of a combination of measures, comprising the DBBC as the principal measure, together with an additional noise abatement measure, which will be selected based on the most appropriate equipment available at the time of construction."* This additional measure could be in the form of a hammer noise mitigation to be used.
- 3.6.67. At Deadline 4 the Applicant submitted a document entitled *"Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm"* produced by the Institute for Technical and Applied Physics GmbH (ITAP) [REP4-067]. This document concluded that the application of NAS for the Proposed Development might be "challenging" due to soil conditions and bathymetry for some foundation locations. In the case of a combination of NAS used an overall reduction of 20db (maybe 22db) is achievable until 40m water depth. However, this document also concluded that for foundations of over 40m the noise reduction might be slightly reduced by 1db (unlikely 2db) due to increased static pressure in case any Big Bubble Curtain (BBC) system is used.

- 3.6.68. Adding to the matter of water depth for NAS the Applicant stated that based on preliminary studies of possible layouts for the offshore wind farm it expects around 30% of the turbines locations to be in water depths of over 40 m. The majority of this 30%, according to the Applicant, would be in the range of 40-50m and a few locations in the range of 50-55m. Furthermore, the Applicant stated that the potential use of enhanced Big Bubble Curtain (eBBC) could allow any 1-2db noise reduction loss to be offset up to approximately 50m [REP5-119].
- 3.6.69. NE responded by stating that it understands that water depths within the Order limit array areas are up to 65m. Therefore, there is a lack of empirical data available for water depths over 40m which does create uncertainty regarding the possibility of achieving a 15dB reduction in deeper waters for DBBC. NE advised that testing of the measures needs to provide evidence that figures in the region of the 15dB reduction can be achieved in the worst-case environmental conditions at the site [REP5-141].
- 3.6.70. In the MMO's Final PADS [REP6-301] it highlighted the potential loss of effective noise reduction by a DBBC when over 40m depth and stated there remains uncertainty. The MMO also stated that is not known where in the array the water depth is greater than 40m, and therefore there is uncertainty as to where a –12 or –14dB noise reduction should be expected relative to sensitive features [REP6-301]. The MMO also requested that an enhanced monitoring programme be put in place for the Proposed Development, which could include obtaining measurements of the first eight piles (or eight of the first 12 piles), of each foundation type, to be installed. MMO state that the enhanced monitoring is necessary to compensate for the uncertainties regarding the effectiveness of a DBBC [REP6-302].
- 3.6.71. The Applicant did not agree to the field testing of DBBC or any other piling noise abatement measures prior to the construction phase. The Applicant explained that any such field test requires a substantial lead-in period in order to collect geotechnical site investigation data for the trial location. Furthermore, substantial time, and significant additional expenditure, is also required to complete the design of the layout of the Proposed Development WTG array to ensure the trial location is correctly sited within an overarching optimised project design, and the procurement of the installation vessel(s), pile driving hammer and full mitigation equipment on a short-term basis. The planning, procurement and preparation for the trial is estimated by the Applicant to require a period of 2-3 years and a cost in excess for £30m [REP6-275, Question FS3.2].
- 3.6.72. The Applicant acknowledged that this is related to an ongoing project and at the present time monitoring information on deployed DBBC efficacy at 60m is not yet available. It is an area that is rapidly evolving. However, the Applicant would further optimise the technical solutions with respect to layout and the equipment required to deliver an effective DBBC at greater depths [REP6-233].

Measures of Equivalent Environmental Benefit (MEEB)

- 3.6.73. At Deadline 4 the Applicant submitted the Kingmere Marine Conservation Zone (MCZ): Without Prejudice Stage 2 MCZ Assessment [REP4-071]. The Applicant explained that this document was produced for the purposed of supporting its position that the conservation objectives of the black seabream feature of the Kingmere MCZ would not be hindered by the Proposed Development.

- 3.6.74. As set out in this document with regard to MEEB, Section 126(7) of the Marine and Coastal Access Act (MCAA) 2009 states:
- “...although the person seeking the authorisation is not able to satisfy the authority that there is no significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ, that person satisfies the authority that:*
- (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 of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it, and*
- (c) the person seeking the authorisation 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.”*
- 3.6.75. With reference to other means of proceeding, the Applicant made reference to the Secretary of State's decision for Hornsea Three Offshore Windfarm. In reflection of this, the Applicant limited the consideration of alternatives to either do nothing (not to progress with the Proposed Development) or to progress within an alternative form of wind farm project [REP4-071, Section 5.5].
- 3.6.76. The Applicant concluded that the do-nothing scenario would result in an estimated loss of circa 1,200 MW and would further decrease the chances of the UK meeting its target of 50 GW by 2030. Furthermore, the Applicant stated that given the leasing (and follow-on consenting) timescales there is only a very small possibility for the estimated 1,200 MW of the Proposed Development to be fulfilled by another UK project in future rounds [REP4-071].
- 3.6.77. The Applicant also stated that consideration has been given to feasible alternatives throughout the development process for the Proposed Development, noting the adopted Commitments [REP6-227] and consideration of options with a challenging design process. Ultimately, the Applicant concluded that project design changes are not considered as feasible other means of proceeding for the Proposed Development. This submission, according to the Applicant, demonstrates a compelling case that the Proposed Development is indispensable and must be carried out for clear public benefits [REP4-071].
- 3.6.78. However, the Kingmere Marine Conservation Zone (MCZ): Without Prejudice Stage 2 MCZ Assessment [REP4-071] introduced a without prejudice MEEB. The Applicant explains that this without prejudice derogation case has been prepared in the event that the current mitigation is considered to be insufficient by the Secretary of State.
- 3.6.79. The Applicant also submitted the Without Prejudice Measures of Equivalent Environment Benefit (MEEB) Review for Kingmere Marine Conservation Zone (MCZ) [REP4-078], though this was updated at the end of Examination [REP6-264]. Within this document the Applicant is proposing Option A as the preferred MEEB, which is the removal of marine litter, including awareness and engagement. Options B and C are presented as alternative MEEB's 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.

- 3.6.80. In response to ExA WQ Q3b-4 [PD-011], NE responded on the matter of the MEEB and stated that there is still a mitigation measure available (no piling from March to July inclusive) that would prevent the conservation objectives of Kingmere MCZ being hindered [REP4-097]. As such, NE stated that there is an alternative means of proceeding [REP5-141].
- 3.6.81. NE response at Deadline 5 [REP5-139] stated that it did not support any of the options. For marine litter removal, for example, NE stated that there is currently no evidence to demonstrate that marine litter is hindering the conservation objectives of the designated site or supporting habitats for breeding black seabream. Also, NE considered that there is currently no evidence that there is a significant amount of litter within Kingmere MCZ, among other reasons. For the reduction in watercraft, several reasons were given by NE for not supporting this option, including that the scheme would be a voluntary measure and in no way enforceable. For the research into black seabream option, NE stated that whilst the research may have merit in its own right, the proposed research and development cannot be considered as compensation or as a MEEB. NE state that this is because there is no guarantee that the research would deliver any outputs or management measures. If it did deliver outputs or measures, then NE explained that these could not be sufficient to offset and provide benefit of equivalent value to the maximum extent of the Proposed Development's effect on black seabream.
- 3.6.82. Lastly, in response to comments from the Applicant relating to a potential Marine Recovery Fund (MRF), NE stated that this is unlikely to be suitable in a relevant timescale, given the species-specific nature of the conservation objectives at Kingmere MCZ [REP5-139].
- 3.6.83. The Sussex IFCA also raised concerns with the proposed MEEB options in the SoCG with the Applicant. The Sussex IFCA raised concerns around the uptake and significance of extending voluntary measures on watercraft restrictions that are already in place within Kingmere MCZ (Sussex IFCA have a voluntary code of conduct that states to drift if possible (no anchoring) or use a lower impact anchor at Kingmere). The Sussex IFCA also question the relevance of litter picking as having a positive impact to black seabream populations. It was the opinion of Sussex IFCA that both measures (litter removal and restrictions on watercraft) as proposed would have negligible benefit [REP6-243, Point SIFCA07].
- 3.6.84. In the NE SoCG submitted at the close of Examination, NE summarised that the measures presented are unlikely to result in any meaningful benefits for black seabream. NE continued to advise the only way to ensure the conservation objectives of the Kingmere MCZ are not hindered is to adhere to a full pilling restriction of 1 March to 31 July inclusive. The item (ref: NE35) had the status of Not Agreed – Material Impact [REP6-266].
- 3.6.85. In the Applicant's Closing Statement [REP6-233] it confirmed that it is its position that each MEEB outlined within the MEEB Review is sufficient to provide benefit of equivalent value to the maximum extent of the Proposed Development's effect on the black seabream spawning grounds.

Worst-case scenarios and modelling locations

- 3.6.86. As set out by NE in its RR [RR-265] at Point 27 it does not agree that the modelling locations used represent the worst-case scenario within Kingmere MCZ. NE advised that modelling from the location within array area closest to the MCZ would appear to represent the greatest potential for overlap for a single pile. NE expressed concern that visually it appears a location to the northeast of the current north-western modelling location could result in greater overlap with the MCZ. At Point 21 NE further questioned why the south modelling location has been considered the worst-case within the array area, as it is not the closest modelling location to Kingmere MCZ. NE also raised whether the worst-case scenario including simultaneous and sequential piling has been considered in the mitigation plan.
- 3.6.87. The Applicant confirmed that the following worst-case piling scenarios were modelled: 13.5m diameter monopiles, using 4,400kJ hammer energy; and 4.5m diameter pin piles for multileg foundations, using 2,500kJ hammer energy [REP5-082]. The maximum hammer energies have been secured through DML Conditions 11(1)(l) (Schedule 11 and 12) of the Recommended DCO. This matter is addressed in more detail in Section 3.5 (Marine Mammals) of this Recommendation.
- 3.6.88. In the updated ES Chapter 8 submitted at Deadline 6 the Applicant confirmed that the maximum spatial design scenario assumes the sequential piling of multileg foundations (4.5m diameter piles) at two separate locations simultaneously (four pin piles at each location and therefore eight pin piles within a 24-hour period) with a hammer energy of 2,500kJ. Furthermore, the MDS for monopiles would be the sequential installation of two 13.5m diameter monopiles at two separate locations simultaneously, therefore being four monopiles within a 24-hour period and the maximum hammer energy would be 4,400kJ [REP6-179].
- 3.6.89. At the final deadline of the Examination NE, in response to the confirmation from the Applicant regarding worst-case scenario simultaneous/sequential piling, advised that provided these stated scenarios are clearly modelled, labelled and assessed across all figures and documents, this aspect of the issue can be resolved [REP6-291].
- 3.6.90. For the northwest modelling location, the Applicant stated that it is intended to be generally representative of the northern side of the array area. The Applicant highlighted that it is important to note that, in respect of black seabream, the exact modelling location on this boundary also lies in an area of the proposed Order limits within which no piling would be undertaken during the black seabream sensitive season due to the proposed piling exclusion zones during the breeding period (March-July) [REP5-122].
- 3.6.91. In response, NE stated that based on the explanation provided by the Applicant, the northwest modelling location does not represent the worst-case piling scenario in the absence of mitigation in relation to Kingmere MCZ. NE advised that the worst-case scenario in terms of the MCZ should be modelled to allow a full understanding of the extent of potential impacts before mitigation measures are considered. This is particularly key as the mitigation measures in this case may change [REP5-139].
- 3.6.92. NE remained concerned at the close of Examination whether the modelling at the east and west locations represents the worst-case spatial overlap with Kingmere MCZ in a simultaneous piling scenario [REP6-291].

- 3.6.93. The Applicant explained [REP6-275] that these east and west locations were modelled to provide the maximum geographical spread of locations and therefore intended to offer the maximum total combined area of impact. The Applicant also explained that recent modelling for the MCZs relate primarily to disturbance, which is a 'single pulse' instantaneous threshold and so in case this is the source of confusion; simultaneous or sequential piling is not relevant to this impact. Consequently, in terms of behavioural effects the distance between the locations does not affect conclusions [REP6-275]. The Applicant also set out that the worst-case includes two monopiles or four pin piles installed sequentially at each location. Also, the Applicant confirmed that all modelling in this section assumes that the two piling operations start at the same time [REP5-046]. However, NE responded by stating that it should be clear in the maximum assessment assumption in Chapter 8 and secured in the DCO that the modelling assumption for two piling operations at once is limited to two locations at one time [REP6-291].
- 3.6.94. In the revised Chapter 8 (Fish and Shellfish) in Table 8-17 [REP6-179] the Applicant clarified that the MDS for simultaneous piling was for:
- Simultaneous installation of single piles (one monopile, or one multileg foundation (four pin piles)) at both the East and West piling locations in the array area, within a 24-hour period.
 - Sequential installation of multiple piles (two monopiles, or one multileg foundations (four pin piles)) simultaneously at both the East and West piling locations in the array area, within a 24-hour period.
- 3.6.95. The Applicant also stated that the south modelling location was made as this modelling location had the greatest impact ranges [REP5-122].
- 3.6.96. Notwithstanding the remaining concerns from NE regarding the modelling locations, NE did state that should the full piling restriction (March to July inclusive) be implemented then the concerns about the modelling locations would be addressed because no impacts on black seabream during the sensitive season would be realised [REP6-291].

Implications of a full piling restriction

- 3.6.97. Both the MMO [REP6-301] and NE [REP6-295] continued their recommendation that there needed to be a full March to July inclusive restriction on piling to safeguard the black seabream within their breeding season. However, the Applicant stated that any further seasonal restrictions (exceeding that which the Applicant already propose), particularly for July, which is one of the least weather restricted months, is likely to significantly affect the construction viability of the envisaged project size. The Applicant also explains that an alternative approach to working around the piling restrictions would be to significantly reduce the scale of the Proposed Development. The Applicant also stated that the scale of the wind farm would be the ultimate determining factor as to whether it will be considered viable and subsequently constructed [REP3-051].
- 3.6.98. In the Applicant's Closing Statement [REP6-233] it stated the following on this matter:

"...the Applicant maintains that such a restriction would have significant implications for the construction of the Project. Specifically, the implementation of a full piling ban would have a direct effect on the construction schedule of the project by

prohibiting construction in the months of the year with the most accommodating weather conditions. Until the final design of the turbines and foundations, and until comprehensive geotechnical surveys are completed, it is difficult to determine with a high level of confidence, what the magnitude of the impacts on the construction schedule would be. However, preliminary construction modelling has strongly indicated that a full piling ban would be extremely challenging, leading to an additional year or more of offshore installation activity being required.”

Seahorses

- 3.6.99. Within the most recent version of the IPSFMP [REP5-082] the Applicant stated that potential significant effects arising from behavioural/disturbance levels of noise from piling works were identified for breeding seahorse as qualifying features of the Beachy Head East MCZ, the Beachy Head West MCZ, Bembridge MCZ and the Selsey Bill and the Hounds MCZ. Furthermore, as explained by the Applicant, the focus of the noise mitigation plan was on the relevant MCZ sites where seahorses are a designated feature, with offshore piling noise attenuation measures mitigation proposed to be applied to construction activities. Also, the Applicant seeks to minimise risks of noise impacts to seahorse when in its overwintering phase, where it remains protected under The Wildlife and Countryside Act 1981.
- 3.6.100. With the NAS as proposed, the Applicant stated [REP5-082] that there would be no significant disturbance of breeding seahorses occurring within the Beachy Head East and West MCZs and the Selsey Bill and the Hounds MCZ. The main NAS would be the use of DBBC which would be deployed as the minimum single offshore piling noise mitigation technology to deliver underwater noise attenuation for all foundation installations throughout the construction of the Proposed Development. The Applicant has assumed a 15dB reduction in source level from use of the DBBC. Furthermore, during the black seabream breeding season (March to July inclusive) the Applicant is proposing using the combination of DBBC and another noise abatement measure, which the Applicant stated would reduce noise by 20dB.
- 3.6.101. NE set out that seahorses are protected under MCAA2009 as a feature of the MCZ regardless of numbers, population size or density. NE also stated that these MCZ sites are the only four MCZ's in England with short-snouted seahorse as a protected feature. Furthermore, both inside and outside of MCZs it is an offence under Schedule 5 Section 9 (1) of the Wildlife and Countryside Act 1981 (as amended) to intentionally kill or injure seahorses [REP2-040].
- 3.6.102. In its RR, NE stated [RR-265] that for the Beachy Head West MCZ there is overlap with the TTS noise contour. Also, given that TTS thresholds are likely to be significantly larger than those for behavioural disturbance, NE stated that logically behavioural disturbance is highly likely to occur. NE advised that seahorses are a protected feature of the MCZ year-round, therefore any mitigation would also need to be proven to be below the threshold for TTS year-round within the MCZ. (Points 44 and 46 of the NE comments on the Applicant's Chapter 8 Fish and Shellfish Ecology). Also, NE expressed concern that no evidence had been provided to support 141dB being a suitable behavioural threshold for seahorses. NE advised that seahorses are a 'group 4' receptor, which have the highest sensitivity to noise and therefore we would expect to see evidence that this threshold was suitable for seahorses.

- 3.6.103. NE advised at Deadline 1 that evidence should be provided to demonstrate that the mitigation measures put forward have proven efficacy (in the same environmental conditions as are present at the Proposed Development site) to reduce the noise levels to below the TTS level within Beachy Head West MCZ [REP1-059a].
- 3.6.104. In response to ExA WQ FS 1.16 [PD-009], NE continued to express concern that the figures submitted by the Applicant only related to TTS and not behavioural impacts on seahorses [REP3-086].
- 3.6.105. At Deadline 4, there was an amendment to the NAS mitigation proposed from the Applicant. The Applicant committed to the use of DBBC noise abatement technology throughout the piling campaign, with the assumed 15dB noise reduction. This was an increase from the 6dB noise reduction through use of a Pulse hammer or similar. Commitment C-265 of the Commitments Register [REP6-227] was updated accordingly to reflect this proposed mitigation. The Applicant explained that the mitigated impact ranges from the implementation of DBBC mitigate the underwater noise so that the contours are set away from the MCZs designated for seahorse. Therefore, the Applicant was confident that with the implementation of DBBC throughout the piling campaign, the Conservation Objectives of the relevant MCZs would not be hindered [REP4-079].
- 3.6.106. In response to the NE concern with the use of 141dB as a behavioural threshold for seahorses, the Applicant presented modelling using a 135dB threshold, with the implementation of mitigation in the form of DBBC, relative to the MCZs where seahorse are a qualifying feature. The Applicant made clear, however, that it did not support the use of this lower threshold [REP4-061]. As demonstrated by the Applicant in [REP4-061, Figure 5.5 and Figure 5.6] the mitigated impact ranges with use of the DBBC and 15dB noise reduction, as defined using the 135dB threshold, do not overlap with any of the MCZs.
- 3.6.107. In response to this, NE advised that if the Applicant committed to the full seasonal piling restriction for black seabream (March to July inclusive), this would cover a proportion of the key breeding time for seahorses also [REP5-139]. NE also stated that whilst the evidence is not available to confirm if a threshold of 135dB is appropriate for seahorses (for a behavioural disturbance threshold), NE advised that it represents a more precautionary approach in the absence of evidence [REP5-141].
- 3.6.108. NE acknowledged that based on modelling that had been conducted by the Applicant there is a potential for impacts to occur on seahorses within Beachy Head West MCZ (TTS and behavioural) and Selsey Bill and the Hounds MCZ (behavioural). NE therefore advised that mitigation is required year-round to ensure the conservation objectives are not hindered [REP5-141].
- 3.6.109. Furthermore, NE concluded the following:
- “..provided that the Applicant were able to field test and evidence that a reduction in the region of 15dB is deliverable during the worst-case environmental conditions at the site, we would be in a position to conclude that the conservation objectives of the four seahorse MCZ’s will not be hindered due to behavioural impacts of from underwater noise generated from piling. Therefore, we advise that the Applicant submits proposals for testing double bubble curtains, outside of the sensitive seasons of other species (namely black seabream and herring) into the Examination.” [REP5-139, Page 8]*

- 3.6.110. At Deadline 4, the Applicant submitted a document entitled “*Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm*” produced by ITAP [REP4-067]. This document stated that for foundations of over 40m the noise reduction might be slightly reduced by 1db (unlikely 2db) due to increased static pressure in cases where BBC system is used. There are areas of seabed over 40m depth within the array area where WTG could be located.
- 3.6.111. As explained in this Section in relation to black seabream, the Applicant did not agree to the field testing of DBBC or any other piling noise abatement measures prior to the construction phase. The Applicant explained that any such field test requires a substantial lead-in period in order to collect geotechnical site investigation data for the trial location. The planning, procurement and preparation for the trial is estimated by the Applicant to require a period of 2-3 years and a cost in excess for £30m [REP6-275, Response to ExA Question FS3.2].
- 3.6.112. At the close of Examination, this remained the situation, with NE stating in its Final PADS [REP6-295] that the matter of seahorses and piling noise is resolvable if the Applicant is able to field test and evidence that a reduction in the region of 15dB is deliverable in the ‘worst-case’ environmental conditions at the site. NE would be in a position to then conclude that the conservation objectives of the four seahorse MCZs would not be hindered due to TTS and behavioural impacts from underwater noise generated from piling.

Herring

- 3.6.113. As explained in Chapter 8 of the ES [REP6-179], as well as being a UK Biodiversity Action Plan (BAP) priority species, herring are important ecologically and form an important component of the diets of larger predators such as other fish, birds and marine mammals. They are also a species of commercial importance. Herring have a swim bladder that is involved in hearing, and therefore are known to be sensitive to underwater noise.
- 3.6.114. The MMO raised concern about the impact to herring from underwater noise. MMO explained that herring are reliant on specific seabed substrates in order to undertake spawning, and therefore do not have the ability to spawn successfully in unsuitable habitats when gravel is unavailable (RR-219, Paragraph 4.6.16).
- 3.6.115. In its Deadline 4 response, the MMO explained that in the case of spawning herring, a significant impact to a population may occur, if the piling sound from the Proposed Development causes the fish to move away from their spawning grounds or cease reproductive activities [REP4-088].
- 3.6.116. The Applicant acknowledged that herring have been identified as a key receptor, with this species being recognised as having important spawning grounds within the English Channel region. The Applicant has identified two herring spawning grounds located within the English Channel; one in French waters (Baie de Seine) and one due south of the Sussex coast, approximately 47km from Proposed Development array area [REP1-020, Section 4].
- 3.6.117. The MMO recognised that the highest intensity herring spawning occurs over grounds located more towards the centre of the English Channel than the array (as shown in Figure 8.8 of ES Chapter 8 Figures [REP6-191]). However, from Figure 8.10 [REP6-191] MMO stated that this clearly indicates that sediments within and

surrounding the Proposed Development array areas are a mixture of “prime, sub-prime and suitable” potential spawning habitat, and therefore have sufficient composition to support herring spawning (MMO RR, Paragraph 4.6.17).

- 3.6.118. MMO advised [RR-219] that in order to evidence their assertion that there is no indication of herring spawning in the vicinity of the array, the Applicant should produce a heatmap following the methodology of MarineSpace (2013a) methods, which were developed in consultation with Cefas and are considered appropriate for use for other offshore activities and have been widely used in EIAs for offshore windfarms.
- 3.6.119. The Applicant stated that from their evidence there was no spatial overlap of the TTS impact contours with the herring spawning ground or areas of high confidence that suitable spawning habitats are present. These high confidence areas were informed by a herring potential spawning Habitat Suitability Assessment (HSA) submitted at Deadline 1 [REP1-020, Section 3.2].
- 3.6.120. In response to the submitted herring HSA the MMO raised concern with this assessment, advising that the ‘heat scales’ were inconsistent with MarineSpace methodology and there were no data layers used from the Eastern Sea Fisheries Joint Committee and also omitted vessel monitoring system (VMS) data as well. MMO recommended that these assessments of Herring Habitat Suitability should be reconducted to incorporate the recommended mapping approach as defined by the methodology of MarineSpace [REP3-076].
- 3.6.121. The MMO [RR-219] concluded that it is necessary for a seasonal piling restriction to be implemented in order to prevent disturbance to spawning herring and their eggs and larvae at the spawning ground during the spawning period of 1st November to 31st January (inclusive) (Paragraph 4.6.62).
- 3.6.122. The Applicant’s evidence included the fisheries sensitivity maps data shapefiles as an indication of the location of spawning and nursery grounds for herring (showing the grounds approximately 47km from the Proposed Development array area). However, MMO stated that this data provides an indication of where herring spawning grounds broadly occur but should not be relied on as the sole indicator of herring spawning. MMO explained that this is because spawning areas are not rigidly fixed and the data used to inform the shapefiles has not been updated since their production, meaning that environmental changes in the distribution of spawning sediments is not reflected. MMO added that the shapefile is also unable to quantify the nuance of how spawning activity varies spatially. Therefore, the MMO do not support the characterisation of the herring spawning ground using the shapefiles used by the Applicant alone [REP3-076].
- 3.6.123. The MMO stated that it is more appropriate for the location of the active herring spawning grounds to be determined using IHLS data. MMO stated that IHLS data provide a direct measure of herring larval density (larvae per m²) across a standardised survey grid which is sampled annually, using appropriate protocols [REP3-076].
- 3.6.124. The MMO at Deadline 4 explained that it was still of the belief that if an area of substrate is identified as being suitable for herring spawning then it should be considered that herring spawning could be taking place and these areas should be protected accordingly [REP4-088].

- 3.6.125. At Deadline 4, the Applicant confirmed that it had committed to the implementation of DBBC noise mitigation technology throughout the piling campaign, therefore mitigating against potential impacts from underwater noise to spawning herring (15dB noise reduction assumed by the Applicant). Furthermore, the Applicant acknowledged that a threshold of 135dB SELss (Sound Exposure Level – Single Strike), based on a study by Hawkins *et al* (2014) had been suggested by the MMO as a suitable threshold for behavioural responses of sensitive fish receptors. Whilst the Applicant did not agree with this lower threshold to be used for herring, it did present the 135dB behavioural impacts threshold relative to the herring stock spawning ground as identified by the Applicant. With the use of mitigation in the form of a DBBC, the Applicant stated that the modelling with noise thresholds of 135dB showed no interaction of the noise contours with the herring spawning ground [REP4-061].
- 3.6.126. The Applicant also stated that eggs and larvae are subject to drifting due to the strong hydrodynamic conditions in the English Channel, and that it was confident this indicated that spawning activities are occurring in the spawning ground towards the centre of the English Channel, as indicated by the Applicant in its data, as opposed to areas where high densities of eggs and larvae are present (as identified by IHLS data) [REP4-072, Ref 3b]. In response to this the MMO confirmed that herring larvae can drift up to 9km a day but that virtually all larvae stocks in western Europe drift in an easterly direction. MMO then set out that if larvae are generally drifting eastwards, they cannot be originating from the area of seabed indicated by Applicant as the spawning ground, as this is located to the east of where the highest larval abundances are recorded [REP5-146].
- 3.6.127. In response to the Deadline 4 updated submissions from the Applicant [REP4-061] the MMO noted [REP5-146] that the Applicant's updated herring potential spawning HSA showed that while the Proposed Development array itself has generally low potential as herring spawning habitat, the Order limits are located on the edge of suitable spawning habitat.
- 3.6.128. The MMO also criticised the Applicant's updated herring potential spawning HSA, such as for using only 1-year of Vessel Monitoring System (VMS) data (years 2016 – 2017) in their heatmap and only applied a confidence score of 5 to IHLS data where the larval density is over 600 larvae per m², being a departure from established methodologies. As a result, MMO stated that given these uncertainties it did not accept the conclusions of the Applicant in relation to the presence and importance of herring spawning grounds in the vicinity of the Proposed Development, based on the heatmap presented [REP5-146].
- 3.6.129. MMO stated that it did consider the submitted modelling from the Applicant which showed the modelling with noise thresholds of 135dB showed no interaction of the noise contours with the herring spawning ground [REP4-061]. MMO stated that the mitigated contours are encouraging as the range of effect for TTS seems to be greatly reduced and appears to remain within the DCO boundary where herring larval densities are lower (0.1 – 2,500 per m²). For the mitigated behavioural effect contours MMO identified that there was still overlap with areas of medium larval densities (23,000 – 48,000 per m²). However, the MMO stated that the overlap of the mitigated behavioural effect contours with areas of high larval abundance (>48,000 per m²) appears sufficiently reduced with a 15dB noise abatement reduction so that the areas of highest potential spawning habitat are now outside of the range of impact [REP5-146].

- 3.6.130. As such, the MMO stated that providing the Applicant can achieve and commit to a reduction of 15dB using a DBBC and based on the modelling of TTS and behavioural effect ranges presented by the Applicant, it may be possible for the MMO's previous recommendation of a piling restriction during the herring spawning season to be amended so that some piling may be carried out during the herring spawning season [REP5-146].
- 3.6.131. In response, the Applicant stated that it is confident that taking into account the site characteristics and noise abatement levels and considering the outputs of live monitoring of numerous projects where NAS has been successfully applied, up to 15dB noise reduction can be achieved within depths of 40m using a DBBC [REP6-274].
- 3.6.132. Turning to the matter of noise abatement efficacy, the MMO noted that there might be a slight decrease of 1-2dB in water depths over 40m. A decrease in the noise reduction achievable by a DBBC in waters deeper than 40m could be up to 2 dB, according to the MMO, but the modelling of a noise reduction of 13dB rather than 15dB had not been undertaken [REP5-146].
- 3.6.133. MMO concluded that if the Applicant is able to remove all uncertainties concerning the efficacy of NAS across the Proposed Development, there may be a possibility of the MMO amending its previous recommendation of a full seasonal piling restriction. However, MMO clarified that this would only be done once the Applicant can clarify the remaining uncertainties around the effectiveness of NAS in depths of over 40m. The MMO has proposed an enhanced monitoring programme to compensate for these uncertainties and to collect data to corroborate the predictions of the noise abatement measures [REP5-146, Paragraph 2.14.21]. The MMO's enhanced monitoring programme would include obtaining measurements of the first eight piles (or eight of the first 12 piles), of each foundation type, to be installed [REP5-146 – Paragraph 2.10.5].
- 3.6.134. In terms of monitoring, the Applicant stated in its Deadline 6 response that it provided an updated Offshore In Principle Monitoring Plan [REP6-220] which details the proposed monitoring commitments. This includes the commitment to monitor four of the first 12 piles of each foundation type in the black seabream breeding season (1 March to 31 July), and monitoring of four of the first 12 piles of each foundation type. This would, according to the Applicant, enable it to validate its noise modelling and to optimise the deployment of the NAS for the remaining installation campaign [REP6-233].
- 3.6.135. The Applicant also updated its herring HSA at Deadline 6 in response to MMO comments at Deadline 5. This includes using more VMS data and adjusting the confidence score for the IHLS data source [REP6-250].
- 3.6.136. In the MMO's Deadline 6 submission, it stated that several factors remained which affected their confidence in the modelling for herring, such as the accuracy of the heat map and secondly the efficacy of the DBBCs. It should be noted that MMO may not have seen the final submissions with updates from the Applicant at the time of writing its final comments [REP6-302].
- 3.6.137. On the basis of the evidence the MMO had at the time of writing its final submission, with the concerns it still had, the MMO maintained its request for a seasonal piling restriction in order to limit disturbance to adult spawning herring during the

spawning period (1 November to 31 January, inclusive) [REP6-302]. The wording recommended by MMO was as follows:

herring spawning (XX) —

(1) The undertaker must not undertake pile driving during the herring spawning period.

(2) The “herring spawning period” means a period within 1 November and 31 January, inclusive.

- 3.6.138. Finally, the MMO also added that if the Secretary of State was minded to grant development consent with seasonal restrictions to safeguard spawning herring, the MMO suggests the wording above could be amended further to include ‘*unless otherwise agreed in writing by the MMO*’. This could allow further discussions to take place and enable flexibility within the condition [REP6-302].

Sandeel

- 3.6.139. The MMO RR [RR-219] recognised that the Applicant had submitted a sandeel potential HSA. However, as with the herring HAS, the MMO took the view that Applicant did not follow the recommended methodology Marinespace (2013). The MMO required revised HSA for sandeel.
- 3.6.140. This update to the sandeel HSA was undertaken by the Applicant and updated for Deadline 6 [REP6-250]. The Applicant concluded from the heatmapping exercise that the Proposed Development array area and ECC lie within an area of low to medium confidence that sandeel spawning habitats are present. The Applicant also explains that the area of the Proposed Development is not considered to be a key area for sandeel spawning activity, when compared to the Dover Strait, where a sandeel spawning hotspot has been identified based on the presence of spawning substrates and a historic spawning ground.
- 3.6.141. The MMO [REP5-146] responded to the updated sandeel HSA but did not agree that the methods used were still entirely align with the regional baseline assessment produced by MarineSpace. However, the MMO stated the following:

“Based on the assessment for all impacts and effects to sandeel, the Applicant has concluded the project will result in Minor Adverse significance, which has been assessed as Not Significant against the Environmental Impact Assessment (EIA) terms. The MMO agree with the Applicant’s conclusion.” [REP5-146, Paragraph 2.14.6].

ExA’s Findings

- 3.6.142. NPS EN-3 2011 acknowledges the potential impacts to fish species. Paragraph 2.6.73 states:

“There is the potential for the construction and decommissioning phases, including activities occurring both above and below the seabed, to interact with seabed sediments and therefore have the potential to impact fish communities, migration routes, spawning activities and nursery areas of particular species. In addition, there are potential noise impacts, which could affect fish during construction and decommissioning and to a lesser extent during operation.”

- 3.6.143. At Paragraph 2.6.58 of the NPS EN-3 2011 it states that biodiversity considerations to which applicants and the Secretary of State should have regard to concerning offshore infrastructure include fish. Furthermore, an Examination should consider the effects of a proposal on marine ecology and biodiversity taking into account all relevant information made available to it (Paragraph 2.6.68].
- 3.6.144. NPS EN-1 2011, regarding biodiversity and conservation, states the following:
- “As a general principle, and subject to the specific policies below, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives; where significant harm cannot be avoided, then appropriate compensation measures should be sought.” (Paragraph 5.3.7)*
- In taking decisions, the Secretary of State should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment. (Paragraph 5.3.8)*
- 3.6.145. NPS EN-1 2011 also specifically discusses policy relating to MCZs. Paragraph 5.3.12 sets out that the protected feature or features and the conservation objectives for the MCZ are stated in the designation order for the MCZ, which provides statutory protection for these areas implemented by the MMO. As a public authority, the Secretary of State is bound by the duties in relation to MCZs imposed by sections 125 and 126 of the MCAA2009.
- 3.6.146. Mitigation advised as possible by NPS EN-1 2011 includes that during construction and operation best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised, including as a consequence of transport access arrangements.
- 3.6.147. In the 2024 version of NPS EN-1 it states that if during an MCZ assessment, CNP infrastructure has residual impacts which significantly risk hindering the achievement of the stated conservation objectives for the MCZ, the Secretary of State will consider making a derogation under section 126(7) of the MCAA2009 (Paragraph 4.2.20). For MCZs, where an applicant has shown there are no other means of proceeding which would create a substantially lower risk, and the benefit to the public outweighs the risk of damage to the environment, the Secretary of State must be satisfied that measures of equivalent environmental benefit will be undertaken (Paragraph 4.2.22).
- 3.6.148. In the 2024 NPS EN-3 it states the following:
- “Applicant assessments should identify the potential implications of underwater noise from construction and unexploded ordnance including, where possible, implications of predicted construction and soft start noise levels in relation to mortality, permanent threshold shift (PTS), temporary threshold shift (TTS) and disturbance, and addressing both sound pressure and particle motion and EMF on sensitive fish species.” (Paragraph 2.8.151)*
- 3.6.149. A fundamental component of the Applicant's mitigation is a zoning approach to piling which is linked to the modelling undertaken based on noise thresholds. However, these noise thresholds are based on a study of seabass, not black

seabream. The reason for this is that there are no similar studies of noise effects on black seabream fish where noise thresholds could be determined.

- 3.6.150. Notwithstanding, the ExA agrees with NE in that there are distinct differences between black seabream and seabass, and evidence on behavioural thresholds should be species specific. Furthermore, the ExA further agrees that there is no scientifically robust way of determining a suitable species-specific noise threshold that could be considered to avoid significant disturbance to that species [REP2-040].
- 3.6.151. Considering the differences in species, including at breeding season, ExA agrees with NE that the use of seabass as a proxy species for these purposes is not satisfactory, and the Applicant's reliance on seabass data casts significant doubt on the noise thresholds. Subsequently, the ExA considers that the use of piling exclusion zones and the mitigation approach by the Applicant to sufficiently reduce the impacts of noise to black seabream in its breeding/nesting season is undermined. The ExA cannot, with any degree of certainty, accept the disturbance noise threshold for black seabream as being 141dB. The species-specific noise threshold for black seabream could possibly be significantly less than this. The ExA is therefore not persuaded that the use of 141dB is sufficiently precautionary. A much lower noise impact threshold for behavioural effects on black seabream cannot be discounted, which could mean that the noise contours would reach Kingmere MCZ if there was any piling at any part of the array during breeding season.
- 3.6.152. On this basis, the ExA cannot rule out the possibility that any piling in the eastern part of the array in the months of March to June inclusive could have a harmful noise impact to black seabream, such as abandoning their nests. The ExA regards this being the same for piling in the western or eastern array areas in July, even if a sequential approach is used, as there is insufficient evidence that in even the furthest parts of array areas from Kingmere MCZ that there would be enough of a separation distance to avoid these noise impacts to black seabream.
- 3.6.153. As for the restrictions necessary for the month of July, from the evidence before the ExA, there is insufficient reasons for this month to be considered as less important than March to June inclusive for black seabream nesting. The Applicant's survey results are noted, showing much less active nests in July. However, the Applicant stated that the factors that can influence this variability are, in its words, not well understood. The Applicant stated that it cannot therefore speculate whether there could be a greater number of active black seabream nests in future July months [REP3-051].
- 3.6.154. As such, it is the ExA's conclusion that July could be of similar importance to the preceding months of March to June for black seabream nesting, with a lack of evidence to indicate convincingly to the contrary. Mitigation should therefore be the same from 1 March to July 31, as required by both the MMO and NE. So, the ExA proposes the additional Condition 26 to Schedule 11 and 12 fully restricting piling from 1 March to 31 July, which is included with the Recommended DCO.
- 3.6.155. The ExA agrees with NE that it is evident that background noise levels rarely reach the thresholds proposed, and when they occasionally do it is only for short periods of time [REP1-059]. While the ExA understands the Applicant's view that ambient noise levels would lessen the impact of piling noise on black seabream, the ExA nevertheless considers that whilst black seabream could be exposed to occasional

loud noises, the piling noise could be at a higher decibel level than average background levels and for longer periods. This could trigger the behavioural responses such as nest abandonment by the black seabream.

- 3.6.156. With regard to the proposed NAS systems, ExA agree with both MMO and NE that from the evidence provided there is a doubt as to the effectiveness of the DBBC when used in water depths of over 40m. At this stage there could be multiple WTGs with foundations over 40m depth and so the stated 15dB noise reduction of the DBBC could be reduced by 1-2dB. It may be possible that the use of an eBBC could allow this 1-2dB noise reduction loss to be offset up to approximately 50m [REP5-119], but this is evolving technology and there is a lack of certainty at this stage.
- 3.6.157. Both NE and MMO have advised the need for in-situ pre-construction testing of NAS, particularly the DBBC, to demonstrate that it would be as effective in noise reduction terms as the Applicant suggest. However, as was clear from the Applicant's responses to this request, this would take a long time to put in place and be very expensive [REP6-275, Question FS3.2].
- 3.6.158. The ExA agrees that setting up full pre-construction testing of the proposed DBBC or similar NAS would be difficult and take a long time and accepts the Applicant's assertion that it could unnecessarily delay the construction phase of the development significantly. However, due to this uncertainty, if any piling is to be undertaken within the black seabream breeding/nesting season of March to July inclusive then the ExA agrees with the MMO that an enhanced monitoring programme be put in place for the Proposed Development, which could include obtaining measurements of the first eight piles (or eight of the first 12 piles), of each foundation type to be installed, rather than the first four piles as proposed [REP6-302].
- 3.6.159. ExA notes that the Offshore In Principle Monitoring Plan [REP6-220] does not include the MMO required enhanced monitoring. It instead states that "*Should permission to undertake foundation installation using percussive piling within the 1 March to 31 July period not be granted, construction noise monitoring will solely comprise four of the first 12 piled foundations.*" Notwithstanding the commitments within the In Principle Monitoring Plan, the ExA agrees with the MMO that enhanced monitoring of piled foundations is required.
- 3.6.160. Condition 11(j) of both Schedules 11 and 12 of the Recommended DCO requires a monitoring plan, which accords with the Offshore In-Principle Monitoring Plan, and is to detail proposals for pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting. As per Condition 11, this would need to be approved in writing prior to the commencement of development. As such, the ExA considers that the MMO would have sufficient control over whether the final monitoring plan is acceptable. On this basis the ExA is satisfied that the condition as worded would ensure the enhanced monitoring would occur if the MMO deemed it necessary at that time.
- 3.6.161. Along with enhanced monitoring, the ExA recognise that the Applicant has stated that it would use adaptive management, if necessary, in relation to the noise abatement technology used [REP6-220]. This may be, for example, due to the bubble curtain being less effective at reducing piling noise as anticipated in the Applicants assessment. The ExA regards the potential use of adaptive management as an important element of the monitoring process. There is limited detail of potential adaptive management measures in this in-principle document. However, a

final monitoring plan is required by Condition 11(1)(J) to be submitted to and approved in writing by the MMO. As such, ExA is satisfied that the MMO would have control over the final details of noise abatement measure monitoring and any adaptive management measures, should they be necessary.

3.6.162. However, as the ExA are not satisfied that there is a robustly evidenced and tested behavioural impact noise threshold and modelling for black seabream then even if the full combination of NAS was to meet the 20dB noise reduction as suggested by the Applicant, it cannot be claimed with certainty that this noise abatement would be sufficient. In other words, even if there was noise abatement that consistently achieved 20dB noise reduction it could be that the actual noise behavioural disturbance threshold on black seabream would mean that the mitigated noise contours could overlap with Kingmere MCZ, causing adverse effects.

3.6.163. As set out previously, Section 126(7) of the MCAA2009 states that:

“...although the person seeking the authorisation is not able to satisfy the authority that there is no significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ, that person satisfies the authority that:

(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 of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it, and

(c) the person seeking the authorisation 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.”

3.6.164. In this case, the ExA is not satisfied that there is no significant risk of the act hindering the achievement of the conservation objectives stated for the Kingmere MCZ due to the noise impact from piling on black seabream. Whilst the Applicant's view is that the benefit to the public of proceeding with the Proposed Development would clearly outweigh the risk of damage to the environment that would be created by proceeding with it, there is another way of proceeding. This is simply by not piling during the period of March to July inclusive. As such, following Section 126(7) the other means of proceeding (the restriction of piling in the breeding season) should be the route to progress with the Proposed Development rather than the use of a MEEB.

3.6.165. The Applicant has submitted MEEB options [REP6-254] but at the close of Examination there was no agreement of the form any MEEB should take from NE, the MMO, or the Sussex IFCA.

3.6.166. On the matter of the modelling locations in relation to Kingmere MCZ, the ExA notes that there was no agreement on this matter at the close of Examination between NE and the Applicant. The ExA notes that NE was concerned about whether the modelling at the east and west locations represents the worst-case spatial overlap with Kingmere MCZ in a simultaneous piling scenario. NE also had concerns that the location of the single northwest modelling point used in the assessment of underwater noise impacts on black seabream does not represent the location closest to Kingmere MCZ.

- 3.6.167. The Applicant's choice of modelling location appears to be based partially on the piling exclusion zone proposed. Whilst such modelling is useful and informative, there should be modelling from the location within the proposed array area closest to the Kingmere MCZ, notwithstanding any potential piling exclusion zones, for example. For this reason, the ExA agrees with NE that the worst-case scenario in terms of the MCZ should be modelled to allow a full understanding of the extent of potential impacts before mitigation measures are considered.
- 3.6.168. NE remained concerned about whether the modelling at the east and west locations represents the worst-case spatial overlap with Kingmere MCZ in a simultaneous piling scenario. The Applicant had clarified that the MDS for stationary fish receptors would be the sequential installation of four pin piles, at two locations (east and west locations in the array area) within a 24-hour period.
- 3.6.169. The ExA are broadly satisfied with the modelling location of the east, west and south points with regards to black seabream and the Kingmere MCZ but recognise that as there was information submitted particularly from the Applicant and NE on these matters at the final deadline within the Examination there was no opportunity for responses.
- 3.6.170. The ExA agrees with NE that should the full piling restriction (March to July inclusive) be implemented then the concerns about the modelling locations would be addressed, because there would then be no impacts on black seabream during the sensitive season [REP6-291]. It is the recommendation of the ExA that a full season piling restriction be imposed, which would mean that there is no issue regarding modelling locations with regard to Kingmere MCZ, as there would be no piling during breeding season of the black seabream. The black seabream related piling restriction would be secured through the ExA proposed additional Condition 26 to Schedule 11 and 12.
- 3.6.171. Overall, the ExA is not satisfied that the piling noise would avoid hindering the conservation objectives of Kingmere MCZ being met, particularly the following objective:
- To ensure the black seabream population occurring in the MCZ be free of the disturbance of a kind likely to significantly affect the survival of its members or their ability to aggregate, nest, or lay, fertilise or guard eggs during breeding.*
- 3.6.172. On this basis, the ExA recommend the following condition for both DMLs:
- (26) - There shall be no piling associated with the authorised development between the dates of 01 March to 31 July inclusive, unless otherwise agreed to by the MMO and the statutory nature conservation body.*
- 3.6.173. The above condition is of different wording than previously sent to the parties during Examination for comment. As such, ExA advise that if this or some other version of this condition is to be included within the DMLs then the Secretary of State may wish to consult the Applicant, MMO and NE for their comments.
- 3.6.174. The ExA accepts that the Secretary of State may disagree. The Secretary of State may conclude that the Applicant has rightly and fairly based its assessment on black seabream and as such, no additional piling restrictions are necessary. In which case, the ExA recommends that the Secretary of State remove Condition 26 in Schedules 11 and 12 of the Recommended DCO.

- 3.6.175. The Secretary of State may concur with the ExA (and NE) 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 construction period. Should this circumstance occur, the ExA advises the Secretary of State to include within the Recommended DCO proposed mitigation in the form of a MEEB [REP6-264], which should be inserted as Schedule 18 into the Recommended DCO.
- 3.6.176. The wording of the recommended full season piling restriction condition does allow for there to be future discussions between the Applicant and MMO, in consultation with NE. This is because the ExA realises that in the future, prior to the commencement of any offshore development, 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. However, based on the evidence available at the close of Examination the ExA consider a full March to July inclusive restriction is necessary.
- 3.6.177. In coming to this conclusion, the ExA has had full regard to the Applicant's description of potential implications of a March to July inclusive piling restriction, such as significantly longer construction phases and potentially a reduced output from the offshore windfarm. The Applicant has stated that until the final design it is difficult to determine with a high level of confidence what the magnitude of the impacts on the construction schedule would be [REP6-233], but it is accepted that the recommended Condition would result in piling restrictions for a period of the year which would likely have suitable weather conditions for offshore piling activity. Nonetheless, considering the importance of the black seabream as a feature of the Kingmere MCZ, on balance, the ExA considers the adverse effects from piling noise to this fish species would outweigh such implications from a full seasonal piling restriction on the construction phase.
- 3.6.178. Turning to the matter of seahorses, the ExA acknowledges that, as demonstrated by the Applicant in Figure 5.5 and Figure 5.6 of [REP4-061], the mitigated impact ranges with use of the DBBC and 15dB noise reduction, as defined using the 135dB threshold, do not overlap with any of the MCZs. This would be the case for both the TTS and behavioural seahorse threshold. Furthermore, the ExA notes that NE accepted the use of 135dB as a behavioural threshold for seahorses, which were included on these Figures and showed no overlap with the seahorse related MCZs. Also, from the NE submissions at the close of Examination, with the 15dB noise reduction at the Proposed Development site through use of DBBC then NE is content that the conservation objectives related to seahorses in the nearby MCZs would not be hindered by piling noise. However, this is on the basis that the 15dB reduction is achievable.
- 3.6.179. There is, however, the uncertainty relating to the efficacy of the DBBC, especially in depths of over 40m which includes parts of the proposed array area Order limits. As discussed in this Section in relation to black seabream, on-site testing would be very difficult, timely and expensive for the Applicant to undertake prior to construction. The ExA accept that on-site testing of DBBC prior to construction commencing is not a reasonable solution.
- 3.6.180. MMO's Final PADS highlights the potential loss of effective noise reduction by a DBBC when over 40m depth and stated that there remains uncertainty [REP6-301]. The MMO requested that an enhanced monitoring programme be put in place for

the Proposed Development, which could include obtaining measurements of the first eight piles (or eight of the first 12 piles) of each foundation type, to be installed, rather than the first four piles as proposed. The reason MMO are requesting this enhanced monitoring is stated to be necessary to compensate for the uncertainties regarding the effectiveness of a DBBC [REP6-302].

- 3.6.181. ExA agrees that the uncertainties relating to DBBC is a crucial issue for seahorses also, to ensure there is no overlap of the behavioural or TTS noise contour of MCZs at the agreed thresholds. As such, ExA concludes that an enhanced monitoring programme should be put in place for the Proposed Development, which could include obtaining measurements of the first eight piles (or eight of the first 12 piles), of each foundation type, to be installed. As discussed above, in connection with black seabream, MMO have control over whether the final monitoring plan is acceptable. On this basis the ExA are satisfied Condition 11(j) of Schedules 11 and 12 of the Recommended DCO as worded would ensure the enhanced monitoring would occur, if MMO still considered it necessary.
- 3.6.182. The enhanced monitoring would test the assumptions of the Applicant and ES assessments in the real setting of the Proposed Development Order limits and its site characteristics. Adaptive management could also then be necessary depending on the results of this monitoring. This should ensure that the noise contours do not overlap with the seahorse related MCZs, providing sufficient security that the seahorse related conservation objectives of the MCZs are not hindered by piling noise.
- 3.6.183. On the matter of herring, the ExA notes the Applicant's evidence that herrings have their spawning ground towards the centre of the English Channel, approximately 47km from the proposed array areas and Order limits. However, the ExA considers that this should not be relied upon solely, due to the time which has passed since the research which could have resulted in environmental changing factors and therefore different spawning ground locations for herring. Furthermore, there is different sources of evidence to indicate current herring spawning grounds which should also be factored in.
- 3.6.184. As recognised by the MMO the herring potential spawning HSA showed that while the Proposed Development array itself has generally low potential as a herring spawning habitat, the Order limits are located on the edge of a seabed area which would be a suitable spawning habitat.
- 3.6.185. The submitted and updated HSA versions for herring from the Applicant were beneficial in providing more evidence as to possible herring spawning ground potential, but there were some concerns raised by the MMO in regard to the methodology used. These include the Applicant using only 1-year of Vessel Monitoring System (VMS) data (years 2016 – 2017) in their heatmap and also only applying a confidence score of five to IHLS data where the larval density is over 600 larvae per m². MMO explained that these points represent being a departure from established methodologies [REP5-146].
- 3.6.186. The ExA notes that at Deadline 6 the Applicant provided an updated HSA [REP6-250] which sought to address the remaining concerns from MMO. This updated version included VMS data from 2007 to 2020. The update also attributed a confidence score of 5 to the IHLS data source, in response to the request by MMO [REP5-146]. However, as this came in at the final deadline of the Examination there was no opportunity for an MMO response.

- 3.6.187. The conclusions of this Deadline 6 revised HSA [REP6-250] were that the outputs of the heatmapping exercise indicates that the Proposed Development export cable corridor and the majority of the array area are located in an area of low to medium confidence that herring spawning habitats are present (score 0-8). There was recorded a discrete area of high confidence (score 9) that herring spawning habitats is evident in the southern extent of the Proposed Development array area, but according to the Applicant, herring larval abundances are minimal for this area (0.1 to 2,500 per m²) and that a confidence score of 5 for this dataset, applied across this area is considered overly precautionary. Areas of high confidence (score 10) that suitable spawning substrates are present, are located approximately 8km southeast of the array area. The HSA also concluded that areas of very high confidence (score 11-14) that suitable spawning substrates are located 47km southeast of the array area.
- 3.6.188. It is the ExA conclusion that the revised HSA from the Applicant [REP6-250] is sufficiently accurate following the updates at Deadline 6. However, the Secretary of State will note that the MMO has not had an opportunity to respond to the latest version of the HSA within the Examination period and may wish to consult MMO as to its response.
- 3.6.189. To address the uncertainty with the use of DBBC as a NAS, especially where it would be used in depths over 40m which could decrease its effectiveness by 1-2dB, the MMO advised the use of an enhanced monitoring programme. The ExA acknowledge that the possible use of eBBC as NAS could overcome the issue of lesser noise reduction in depths of over 40m, though there is uncertainty with this new technology. An enhanced monitoring approach could address these concerns to ensure that the Applicant is correct in its confidence that a 15dB reduction would be possible for all piled foundations.
- 3.6.190. The MMO's enhanced monitoring programme would include obtaining measurements of the first eight piles (or eight of the first 12 piles), of each foundation type, to be installed [REP5-146 – Paragraph 2.10.5]. The MMO have control over whether the final monitoring plan is acceptable, which may also include adaptive management measures if necessary. On this basis the ExA is satisfied Condition 11(j) of the recommended DCO as worded would ensure the enhanced monitoring would occur, if MMO still considered it necessary.
- 3.6.191. On the matter of herring, it is the recommendation of the ExA that with the revised HSA and the use of the aforementioned enhanced monitoring to ensure a 15dB noise reduction from use of the DBBC is sufficient to safeguard spawning herring and also sufficient to avoid the need for a piling restriction through the herring spawning season.
- 3.6.192. As was the case with herring, the MMO were not satisfied with the sandeel HSA undertaken by the Applicant as it did not follow the recommended methodology such as Marinspace (2013). This requested revision to the sandeel HSA was undertaken by the Applicant and updated for Deadline 6 [REP6-250]. However, this final version of the HSA, which sought to address the MMO concerns, was submitted at the final deadline and so there was no opportunity for the MMO to respond to this. Nonetheless, the MMO did state that it agreed with the Applicant's conclusion that the Proposed Development would result in Minor Adverse impact to sandeel, which has been assessed as Not Significant [REP5-146, Paragraph 2.14.6].

- 3.6.193. On this basis the ExA concludes that there is no dispute with the conclusions of the ES [REP6-179] on the matter of sandeel from the MMO or any other party. The ExA is therefore satisfied with the ES assessment on the matter of sandeel.
- 3.6.194. As a summary, on the matter of black seabream and the Kingmere MCZ, the ExA is not satisfied with the mitigation proposals set out by the Applicant. Using the precautionary principle a full seasonal restriction should be imposed so there is no piling during the full March to July inclusive nesting season.
- 3.6.195. For seahorses, the use of the DBBC throughout the year, whenever there is piling activities taking place, as committed to by the Applicant, should ensure that noise does not have behavioural or TTS impacts to this species within the relevant MCZs. However, enhanced monitoring is necessary for the piling activity due to uncertainties over whether the DBBC can achieve a 15dB reduction in the environment of the offshore Proposed Development areas.
- 3.6.196. For herring there was no agreement within the Examination of the HSA methodology and conclusions to determine the potential location of spawning herring. However, ExA do note that a revised HSA was submitted with the final deadline before close of Examination which appears to ExA to be satisfactory to provide accurate results and conclusions. It may also address the MMO concerns, but the MMO did not get the opportunity to comment due to the close of Examination. On this matter, it is the recommendation of the ExA that a piling restriction to safeguard spawning herring is not required, though the enhanced monitoring of piling is necessary, as advised by the MMO, to ensure the efficacy of the DBBC or any other form of NAS in preventing noise impacts to herring at their spawning grounds.
- 3.6.197. Finally, for sandeel, the ExA is satisfied with the ES assessment on the matter of sandeel, with MMO stating [REP5-146] that it agreed with the Applicant's conclusion that the Proposed Development would result in Minor Adverse impact.
- 3.6.198. As such, the Proposed Development, in relation to the effects it would have on fish and shellfish, would be in compliance with both the policies within NPS EN-1 and EN-3 2011. This includes NPS EN-1 2011, which requires that development should aim to avoid significant harm to biodiversity interests, including through mitigation and consideration of reasonable alternatives (Paragraph 5.3.7). The Proposed Development, with the mitigation recommended, would also protect features and the conservation objectives of the MCZs, as required by NPS EN-1, Paragraph 5.3.12.
- 3.6.199. The ExA would advise that with the mitigation recommended the duties in relation to MCZs imposed by sections 125 and 126 of the MCAA2009 would be met.
- 3.6.200. Finally, the ExA was satisfied that the Applicant has adequately addressed all other raised matters at the various Examination deadlines, further to the issues covered in this section of the Recommendation.

Conclusions

- 3.6.201. The ExA concurs with ES Chapter 8 [REP6-179] that the significance of residual effect from the Proposed Development on fish and shellfish would be no greater than Negligible to Minor Adverse (Not Significant) from any phase of development. However, the ExA recommends the inclusion of Condition 26 in Schedules 11 and 12 of the Recommended DCO as being necessary to ensure residual effects on

black seabream of the Kingmere MCZ are not greater than Minor Adverse, as this restricts piling activity within the black seabream nesting season.

- 3.6.202. The ExA is satisfied that the Applicant has demonstrated that the impacts associated with the Proposed Development can be satisfactorily mitigated and managed through the commitments identified in the Commitment Register [REP6-227], which are secured by the relevant Requirements and Conditions in the Recommended DCO/DML, along with the additional Condition 26 of the DMLs.
- 3.6.203. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant, NPS EN-5 2011 and with other national and local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.6.204. The ExA attaches a Little Negative weight to fish and shellfish matters in the planning balance.
- 3.6.205. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to fish and shellfish and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPS EN-1, EN-3 and where relevant EN-5 2011.

3.7. COASTAL PROCESSES AND BENTHIC SUBTIDAL AND INTERTIDAL ECOLOGY

The Applicant's Case

- 3.7.1. For benthic ecology, it is Chapter 9 of the ES (Benthic, Subtidal and Intertidal Ecology) which was originally submitted with the application [APP-050] with Figures for this Chapter [APP-082]. The Chapter and Figures have been updated, now reference [REP6-181] and [REP2-010] respectively.
- 3.7.2. Also submitted related to benthic matters were the following:
- Cable and Grid Connection Statement [APP-034].
 - Offshore wind farm characterisation surveys - subtidal habitats survey [APP-137].
 - Predictive seabed mapping methods report [APP-135].
 - Offshore wind farm intertidal habitats survey report [APP-136].
 - Subtidal benthic characterisation survey report appendices [REP1-036].
 - Geophysical Surveys (Seven parts) [APP-138] to [APP-144].
 - Technical Note Cable Corridor area mitigation for sensitive features [APP-145].
 - Outline Scour Protection and Cable Protection Plan [APP-234], Updated version [REP5-075].
- 3.7.3. Later in the Examination, an Outline Cable Burial Risk Assessment [REP5-123] and an Outline Cable Specification and Installation Plan [REP5-126] were submitted by the Applicant.
- 3.7.4. For coastal matters, it is Chapter 6 of the ES (Coastal Processes) which was originally submitted with the application [APP-047] with Figures for this Chapter [APP-079]. The Chapter and Figures have been updated, now reference [REP6-175] and [REP6-191] respectively.

- 3.7.5. With the application there was also submitted a 'Coastal processes technical report: Baseline description' [APP-129], a 'Coastal processes model design and validation' [APP-130], and a 'Coastal processes technical report: Impact assessment' [APP-131], updated at Deadline 5 [REP5-044].
- 3.7.6. The ES assessments [REP6-175] [REP6-181] takes into account relevant legislation, including the EC Directive 92/43/EEC on Conservation of Natural Habitats and Wild Fauna and Flora, 1992 (known as the 'Habitats Directive'), The Wildlife and Countryside Act 1981, the MCAA2009, and the Natural Environment and Rural Communities (NERC) Act 2006 - Section 41 Habitats of Principal Importance (HPI). Furthermore, NPS 2011 policies within EN-1 and EN-3 were identified, along with the UK BAP Priority Species and Habitats, and the South Inshore and South Offshore Coast Marine Plan (July 2018), among other relevant policies (both local and national) and legislative sources.
- 3.7.7. In terms of the spatial scope of the ES assessment, the ES Chapter for Coastal Processes [REP6-175] sets out that the spatial scope was land within the Order limits together with the ZOI. Examples given include the potential impact on waves at the adjacent coastline between Beachy Head and Selsey Bill, with the extent of potential sediment plume impacts described by the tidal excursion buffer.
- 3.7.8. For benthic matters, the ES [REP6-181] explains that the spatial scope of the benthic subtidal and intertidal ecology assessment is defined as the land within the Order Limits together with the secondary impact ZOI. The ZOI buffer encompasses the area over which suspended sediments may travel following disturbance as a result of Proposed Development activities, extending a precautionary 16 kilometres (km) around the array, and 16km surrounding the offshore ECC.
- 3.7.9. The temporal scope of the assessment of benthic ecology and coastal processes is the entire lifetime of the Proposed Development [REP6-175] [REP6-181].
- 3.7.10. For benthic ecology, the potential receptors identified were grouped into either broadscale habitat features (such as *saballaria spinulosa* on stable circalittoral mixed sediment), features of the MCZ (such as subtidal chalk) and broadscale features of MCZs (such as subtidal coarse sediment).
- 3.7.11. Benthic ecology potential effects scoped in for assessment is set out in Table 9-8 of the ES [REP6-181] and includes, for example, habitat disturbance due to construction activities, temporary increase in SSC, and habitat disturbance due to gravel bag bed installation, among others.
- 3.7.12. For coastal processes matters, the ES [REP6-175] identifies potential receptors in Table 6-6, which include the following for example:
- Nationally or internationally designated sites (including MCZs and Sites of Special Scientific Interest (SSSI)).
 - Local coastal morphology.
 - Regional coastal morphology.
 - Nearby offshore sandbanks.
 - Recreational surfing wave resource.
- 3.7.13. Potential effects to coastal processes are set out in the ES [REP6-175] in Table 6-7 and includes, for example, changes in SSC and deposition in the water column and

seabed environment; changes to landfall morphology; and potential changes to tidal, wave, sediment transport regimes and seabed scour.

- 3.7.14. For the methodology for baseline data gathering the ES [REP6-175] [REP6-181] includes desk studies using a range of sources. This includes the existing Rampion 1 OWF benthic ecology baseline characterisation (survey 2011) and the Rampion 1 OWF post-construction benthic survey report (surveys 2019 and 2020).
- 3.7.15. There were also site surveys undertaken, with a geophysical survey and a benthic survey for site specific survey data collection [REP6-175] [REP6-181]. The geophysical survey was completed in 2020 and included the use of single-beam and multi-beam echo sounders, side scan sonar, magnetometer and a sub-bottom profiler. The benthic subtidal survey was completed between 2020 and 2021 and included grabs for samples.
- 3.7.16. The ES [REP6-181] explains that the *“data obtained has been used to update the characterisation of the benthic subtidal environment in terms of sediment type and associated benthic and epibenthic communities and has fed into an update of the predictive habitat model to determine likelihood of biotope presence across the proposed Order limits.”* [Paragraph 9.5.7].
- 3.7.17. More detail of predictive modelling used is set out in the Predictive Seabed Mapping Methods Report [APP-135]. This document explains that predictive habitat mapping is a widely used, automated process of classifying benthic habitat and utilises a variety of high-resolution physical variables identified as proxies for habitat and the composition of species and communities of species associated with particular habitats.
- 3.7.18. The ES [REP6-181] explains that the geophysical survey data was used to form the base data for the predictive habitat mapping, to present detailed information on the distribution of sediments, biological zones and biotopes across the study area for the Proposed Development. The primary purpose of creating the predictive habitat model, according to the Applicant, was to address baseline characterisation data gaps.
- 3.7.19. The ES [REP6-175] [REP6-181] describes the use of parameter based MDSs. It explains that the assessment of the maximum adverse scenario for each receptor establishes the maximum potential adverse impact. As a result, impacts of greater adverse significance would not arise within the maximum development scenarios. Maximum assessment assumptions are linked to activities or impacts. This includes, for example, total maximum habitat disturbance, sandwave clearance, and gravel bag bed installation seabed disturbance area.
- 3.7.20. A number of embedded environmental measures have been adopted to reduce the potential for impacts on benthic, subtidal and intertidal ecology [REP6-181]. These include numerous commitments set out in Table 9-16 (also set out within the Applicant's Commitment Register [REP6-227]). These include, for example, commitment C-96 which states that *“subsea array and export cables will be installed via either ploughing, jetting, trenching, or post-lay burial techniques, to a target burial depth of 1m”*. Also, commitment C-269 states that *“cable routeing design will be developed to ensure micrositing where possible to identify the shortest feasible path avoiding subtidal chalk and reef features, peat and clay exposures and areas considered to potentially support black seabream nesting”* [REP6-181, Table 9-16].

- 3.7.21. Commitments relevant to coastal processes are listed in Table 6-12 of the ES [REP6-175]. Many of these also relate to benthic matters. However, of particular note is C-43 which requires that *“The subsea export cable ducts will be drilled underneath the beach using HDD techniques.”*
- 3.7.22. The Commitments would be secured through the Conditions within the DML within the Recommended DCO. Of particular note are Conditions No 1 (Design Parameters), No 9 (Chemicals drilling and debris), No 11 (Pre-Construction Plans and Documentation), No 16 (Pre-Construction monitoring and surveys), No 18 (Post-construction monitoring), No 20 (Updating of cable monitoring plans), No 21 (Piling), No 22 (Reporting of CP), and No 23 (Decommissioning).
- 3.7.23. Conditions No 11 of these Schedules notably include the requirement for the Applicant to submit for approval by the MMO many final documents, including the following:
- A final Project Environmental Management Plan (PEMP).
 - A Monitoring Plan.
 - A final SFMP.
 - A Construction Method Statement.
 - A Scour Protection and Cable Protection Plan.
 - A Cable Specification and Installation Plan.
 - A detailed Cable Laying Plan.
- 3.7.24. Requirement 26 of the Recommended DCO is also relevant to coastal processes, as it requires that:
- (1) No works comprising Work Nos. 6 or 7 are to commence until a coastal erosion and future beach profile estimation assessment has been carried out and a scheme identifying any mitigation or adaptive management measures required to help minimise the vulnerability of this part of the Order land from future coastal erosion and tidal flooding (if required) has been submitted to and approved in writing by the Environment Agency.*
- (2) Any mitigation or adaptive management measures identified as part of the scheme submitted pursuant to (1) above must be implemented as approved.*
- 3.7.25. As set out in Table 9-29 of the ES [REP6-181] in the Summary of Assessment of Residual Effects the ES concludes that, for benthic matters, the overall residual effect (significance) of an activity or impact at any phase of the Proposed Development would not be greater than ‘Minor Adverse’. Furthermore, the CEA within the ES [REP6-181, Table 9-28] relating to benthic matters assesses that there would be no spatial overall or direct impact expected. Indirect impacts are assumed by the Applicant to be minor or indistinguishable from natural variation.
- 3.7.26. For coastal processes matters in the ES [REP6-175, Table 6-15] sets out that the Summary of Assessment of Residual Effects would be no greater than ‘Minor Adverse’ for any activity and impact, which is not significant in EIA terms.
- 3.7.27. The ES [REP6-175, Section 6.12] provides an assessment of cumulative effects, which included aggregate dredging activities and dredge disposal activities. However, the ES assessment concluded that there would be no significant cumulative effects.

Examination Issues

3.7.28. The main issues in the Examination were:

- The use and appropriateness of using predictive modelling.
- Cable route and installation effects.
- Use of gravel bag beds.
- Coastal horizontal direct drilling
- SSC impact to MCZ.
- Impact to kelp.
- Use and securing of adaptive management.
- Clarification and assessment of worst-case scenarios for benthic and coastal impacts.
- Use of chemicals and substances in the marine environment.

The use and appropriateness of using predictive modelling

3.7.29. As described above, the Applicant has used predictive modelling as part of its ES assessment for benthic, subtidal and intertidal ecology. However, NE criticised the use of predictive modelling. Within NE's RR [RR-265] it stated that it does not endorse a predictive modelling approach and noted the statistics provided by the Applicant showed clear issues with the confidence in this model, when compared to site specific data. Furthermore, NE explained that outside of the site-specific data, the Applicant had undertaken predictive modelling which relied heavily on data from literature and other surveys, which are dated and not specifically collected for this purpose.

3.7.30. NE went on to advise [RR-265] that the conclusions drawn from the modelling are disregarded and instead greater emphasis is placed on avoiding, reducing and mitigating any potential impact pathway as much as possible. NE also advised that a DCO requirement is placed on the Applicant to undertake comprehensive pre-construction surveys which encompass sufficient data collection to inform micro-siting and provide a robust baseline, that includes a rigorous analysis.

3.7.31. In response, the Applicant [REP1-017] explained that the predictive habitat model uses the best available data for the Order limits. The Applicant considered that the combined data, including site-specific benthic and geophysical survey data, to be of sufficient spatial resolution to allow confidence in the benthic characterisation for the purposes of EIA. The Applicant also highlighted that it has committed to undertaking detailed pre-construction surveys.

3.7.32. The Applicant further set out [REP1-017] that the assessment does not rely upon a habitat model based solely on historic data. The Applicant stated that the site-specific survey information has been used to augment the habitat model to provide a robust baseline appropriate for the purposes of EIA, rather than substituting for a lack of site-specific data. The resulting combined dataset is considered by the Applicant to be robust.

3.7.33. At Deadline 3 [REP3-086] NE clarified that it was aware that site specific data had been incorporated into this model, but this data had limitations in terms of how robust and comprehensive it is. NE reiterated that it is critical that requirements are placed on the Applicant within the DCO/DML to collect robust pre-construction baseline benthic data to inform the development of mitigation measures.

3.7.34. The Applicant confirmed [REP3-051] that the habitats that were recorded during the site-specific surveys are the main focus of the assessment. However, the Applicant also explained that the assessment also draws upon some of the historic data that was presented within the predictive habitat model to build a broader picture of habitats. Therefore, according to the Applicant, the assessment is more precautionary in nature as it assesses a wider range of potential habitats where ground-truthing cannot provide full coverage.

3.7.35. There were no more substantive comments from any parties in relation to predictive modelling within the Examination.

Cable route effects

3.7.36. The Applicant submitted its IPSFMP [APP-239], with a final version at Deadline 5 [REP5-082]. One of the purposes of this document is to set out the approach with mitigation for the offshore export cable installation (including seabed preparation and CP). The Applicant stated [REP5-082] that the export cable installation impacts from the Proposed Development could result in significant effects on sensitive seabed receptors in the absence of further mitigation.

3.7.37. The mitigation proposed in the IPSFMP [REP5-082, Section 5.2] includes, for example, the following:

- Cable route design and micrositing, to deliver avoidance of known sensitive features within the offshore ECC area as far as practicable, as well as maximising the potential to achieve cable burial.
- To use specialist cable laying and installation techniques, to minimise the direct and indirect (secondary) seabed disturbance footprint to reduce impacts.
- In relation to fish ecology, but with also an implication for benthic ecology, there is a commitment to have a seasonal restriction for cable installation works, to ensure offshore ECC installation activities are undertaken outside the black seabream breeding period (March-July inclusive) to avoid any effects from installation works on active black seabream nesting (such as within Kingmere MCZ).

3.7.38. For the cable route design, the Applicant [REP5-082] also stated that whilst avoidance by routing design reduces the potential for direct impacts from export cable installation works, the IPSFMP also utilises appropriate buffering from sensitive receptor locations to similarly reduce the potential for indirect impacts to arise, such as from suspended sediment and smothering effects. Commitment C-270 [REP6-227] stated that a working separation distance (buffer) would be maintained wherever possible from sensitive features.

3.7.39. Furthermore, the Applicant [REP5-082] committed to using only essential CP (for example, where required for cable/pipeline crossings and where burial is not possible for sections of the cable length), in order to minimise effects on the Kingmere MCZ features and NERC habitats. The Applicant explains that routing design would therefore be undertaken to maximise burial potential along the route and the targeting of paleochannels and areas where cable burial is most likely to be successful [REP5-082].

3.7.40. These commitments are set out within the Commitment Register [REP6-227] and a final Sensitive Feature Management Plan is secured via Condition 11 of both DMLs (Schedule 11 and 12 of the Recommended DCO).

- 3.7.41. NE responded at length on the matter of cable routes and impacts in its RR [RR-265]. NE identified from the Applicant's evidence that 2.35km of route length (per cable) may require a level of alternative protection, such as rock dumping (a form of CP) and also that a mechanical cutting trencher is necessary for up to 54% of the route length, of which 13% is considered likely to require further protection with rock placement. NE [RR-265] stated that use of specialist cable installation techniques to minimise the footprint may not be applicable for over half of the cable route, which undermines the potential to minimise impacts significantly.
- 3.7.42. To address these concerns, NE required [RR-265] geotechnical data to be provided at the consenting stage to inform a Cable Burial Risk Assessment (CBRA) and Cable Specification and Installation Plan (CSIP), with both taking into account lessons learnt from Rampion 1 OWF.
- 3.7.43. With regards to CP, NE [RR-265] sought clarity on whether the Applicant is committed to removal of CP at the time of decommissioning (where possible). NE advised that the Applicant should consider measures that would be removable.
- 3.7.44. In their RR, NE [RR-265] also highlighted the importance of chalk, explaining that it is a finite resource, and any damage to the physical structure of chalk is permanent. NE advised that geotechnical information was required at the consenting phase to inform a CBRA, so that the impacts on chalk could be fully understood and the effectiveness of the mitigation proposed would be more certain. NE stated that it does not endorse avoidable loss of irreplaceable NERC priority habitats (such as marine chalk), and therefore it is imperative that the Applicant seeks to minimise impacts where possible, and clearly demonstrate lessons learnt.
- 3.7.45. The Applicant responded [REP1-017] stating that geotechnical information would be collected after the DCO is made with the CBRA. Furthermore, the Applicant explained that the learnings from past other projects laying subsea cables would be applied to the Proposed Development and fabrication of new and more efficient burial tools are likely to lower the risk of exposure. The Applicant also stated its aim for the Proposed Development would be to select a contractor who, with their selected equipment and proposed methods, would be able to bury the subsea cables and minimise the likelihood of future cable exposures.
- 3.7.46. On the matter of geotechnical information, the Applicant confirmed that it would not be providing any geotechnical information during the consenting stage of the Proposed Development because it would be expensive (estimated to be in the £10m(s) for the cost) [REP1-033].
- 3.7.47. In terms of CP, the Applicant [REP1-017] introduced commitments to the Commitment Register [REP6-227] for the use of secondary protection material (CP) that has the greatest potential for removal on decommissioning of the Proposed Development as set out within Commitment C-289. Furthermore, the Applicant committed to minimising the release of plastics into the marine environment, and committed to using suitable alternatives, where this is practicable.
- 3.7.48. The Applicant [REP1-017] also set out that the proportion of cables potentially requiring some form of CP is not an arbitrary number. The 20% figure given by the Applicant is stated to be an informed estimate based on the site conditions evident at the Proposed Development site and initial consideration of engineering constraints related to cable routing and installation. The Applicant stated that this estimate is made on a precautionary basis and that the Proposed Development

would be within the case assessed at the consenting stage, in-line with the design envelope and maximum design (worst-case) scenario approach.

- 3.7.49. In relation specifically to chalk impacts, the Applicant [REP1-017] highlighted that the sensitivity of chalk was afforded a 'high' sensitivity category within the ES assessment as a result of its protected status. However, the Applicant recognised that due to the widespread nature of chalk in the region, often as underlying geology beneath surficial sediment cover, not all chalk can be avoided. The Applicant's approach would be to minimise permanent loss of chalk which includes the use of specialist equipment to minimise impact footprints in such areas where full avoidance is not possible. Furthermore, the Applicant confirmed that it was not possible to extend the HDD to the extent that all the inshore chalk area is avoided [REP1-017, Page 344].
- 3.7.50. Further into the Examination, NE [REP3-086] stated that CP options should minimise the environmental impacts as far as possible and the type of CP used should be the most likely to be removable at decommissioning, thereby reducing the risk of disruption to sediment transportation and habitat loss.
- 3.7.51. On the matter of CP, the MMO [REP6-302] noted that Commitment C-300 [REP6-227] stated that "*Cable protection will be used that minimises the environmental impacts as far as practicable*". However, MMO stated that it should be recognised that CP options are limited, and all introduce non-native materials to the seabed surface, with slightly different potential impacts. As such, MMO set out that minimising impact may require value judgments as to which of the incongruent costs and benefits of the options best represent a 'minimum'. However, as the Applicant had not committed to a definite type of CP it was not possible for MMO to comment yet on how and whether Commitment C-300 will be met. In the SoCG it stated that the MMO believes that this can be discussed through the Scour Protection and Cable Protection Plan at post consent should the DCO be granted [REP6-241].
- 3.7.52. In regard to chalk impacts, NE [REP3-086] advised that impacts to marine chalk from the proposed cable corridor are unlikely to be entirely avoidable. However, NE explained that this habitat is protected under Section 41 of the NERC Act (2006), is a scarce resource worldwide and any damage to the physical structure of chalk is permanent. Furthermore, NE stated that whilst HDD may not be able to avoid impacts to chalk entirely, it advised that it should be considered as one of the options to minimise the loss of chalk habitat as far as possible. NE supported the Applicant's commitment to infilling of the cable trench with chalk cuttings as this has the potential to act as a form of cable burial protection, rather than impacting on other surrounding habitats. However, NE advised that the value of the chalk cuttings is not the same as the chalk before it is cut.
- 3.7.53. The MMO [REP6-302] also commented in Examination with regard to chalk impacts. The MMO stated that avoidance of chalk should still be the primary aim where possible, though if chalk is excavated then that excavated chalk should only be used to infill trenches in areas of seabed defined as being chalky.
- 3.7.54. With regard to cable burial, NE [REP3-086] advised that to understand how likely it is to bury the cable and the likely effectiveness of the mitigation measures in minimising impacts on ecological receptors, geotechnical data should be provided at the consenting stage to inform a CBRA and a CSIP.

- 3.7.55. At Deadline 5 the Applicant submitted both an Outline CBRA [REP5-123] and an Outline CSIP [REP5-126]. The Outline CBRA covered issues such as cable routing, taking into account seabed gradients, fishing activity and existing infrastructure, for example. The Outline CSIP includes cable technical specifications, a cable installation methodology, and the approach to cable reburial, for example.
- 3.7.56. NE [REP6-290] responded at Deadline 6 (the final deadline within the Examination) in detail to both the Outline CBRA [REP5-123] and the Outline CSIP [REP5-126]. Whilst NE welcomed the submission of these cable documents it advised that without the inclusion of site-specific geotechnical data the level of uncertainty on the extent to which the mitigation measures proposed can be applied remains. In most points raised by NE [REP6-290] in response to the Outline CBRA [REP5-123] and the Outline CSIP [REP5-126] there were suggested need for more information, changes or clarifications needed. However, NE concluded for most points that the Applicant would need to adequately respond through final versions of the CBRA, CSIP, or SFMP.
- 3.7.57. An example point of NE's responses [REP6-290] to the Outline CBRA [REP5-123] and the Outline CSIP [REP5-126] include the need for detailed geotechnical information available to understand how effective a 1m target depth of cable burial as a mitigation measure would be and over how much of the route it would be possible. NE advised that this matter remained unresolved and would need to be resolved within the final CBRA and would require sufficient data to be included to achieve this (Point 10).
- 3.7.58. There was no response to the NE points about the Outline CBRA [REP5-123] and the Outline CSIP [REP5-126] as this submission was at the final Deadline of the Examination. However, NE [REP6-290] did state *"that with the quantity of outstanding concerns, Natural England advises that should the Secretary of State be minded to consent the project, as submitted, that there is a requirement for the DCO/DML to secure signoff and agreement by the MMO, in consultation with the relevant SNCB, of all final named plans. We do however advise that such an approach transfers uncertainties to the post consent phase with no guarantee risks and issues can be resolved."*
- 3.7.59. NE [REP6-295] concluded on benthic proposed mitigation of HPI (including but not limited to sabellaria spinulosa, chalk, and peat and clay exposures), Annex I habitats (stony reef, bedrock reef) and black seabream nests that there was uncertainty and was not clear. NE stated that this issue remained unresolved as it is contingent on detailed geotechnical surveys being undertaken post consent to inform a CBRA. It was NE's view that the CBRA submitted at Deadline 5 is currently insufficient.
- 3.7.60. The Applicant's Closing Statement [REP6-233] confirmed that when designing the CP solution, the key driver would be to ensure it remains in place over the lifetime of the Proposed Development with minimal operational intervention. As such, the Applicant stated that subsea cable burial would be the preferred option for CP. The Applicant has based its assessment of cable burial potential on current data, which it considers appropriate at this pre-consent stage.
- 3.7.61. The Applicant [REP6-233] stated that it has adopted an appropriate approach to minimising potential impacts to priority habitats and species in the intertidal and subtidal environment, with avoidance through informed design/micrositing and,

where avoidance is not possible, minimisation of impacts through mitigation as set out within the IPSFMP [REP5-082].

- 3.7.62. Finally, the Applicant [REP6-233] stated that geotechnical information would be collected post-consent and would be provided to potential cable installers during the tendering for these works. The Applicant confirmed that a technical evaluation of the methods proposed by the tendering parties would be undertaken as part of the preparation of the final cable burial risk assessment which would be in accordance with the Outline CBRA [REP5-123] and used as part of the decision-making process to select the preferred supplier.

Use of gravel bag beds

- 3.7.63. NE in its RR [RR-265] acknowledged that there could be issues with cable installation vessels being able to access nearshore areas, where the waters are shallow. NE also acknowledged that the use of floatation pits to address this issue has been discounted by the Applicant, which NE explained was the method used by the Rampion 1 OWF and resulted in significant loss of irreplaceable chalk. NE went on to question whether the gravel bag beds which could be used as an alternative had been assessed, and whether it would be loose or bagged gravel used.
- 3.7.64. In response the Applicant [REP1-030] submitted an assessment of gravel bag beds (Section 3). The Applicant confirmed it had discounted the use of floatation pits as an option in case vessel beaching is not possible. However, the Applicant stated that a cable installation method still needs to be available as an alternative to vessel beaching (where ground conditions would not allow for this).
- 3.7.65. The Assessment, in considering the magnitude of impact of gravel bag beds, stated:
- “The sensitivity of the of subtidal benthic communities within the footprint of the proposed gravel bag beds are therefore considered to be worst-case medium, reflecting that the receptors have some ability to tolerate the potential impacts and could potentially recover to an acceptable status over a 10-year period.”* [REP1-030, Paragraph 3.3.10]
- 3.7.66. The result of the Applicant’s assessment was that the residual effect of the use of gravel bag beds on benthic receptors would be Minor Adverse (not significant) [REP1-030].
- 3.7.67. NE responded [REP2-038], with particular focus on the impact of the gravel bags on chalk. NE stated that there is the potential for abrasion of the chalk platform just seawards of Mean Low Water Spring (MLWS) or in proximity to it, through the placement of gravel bag beds on the seabed. NE explained that this abrasion could cause permanent loss of irreplaceable chalk habitat and downwearing of the chalk platform which in turn could affect wave patterns approaching Climping Beach and alter the beach morphology and/or coastal erosion.
- 3.7.68. NE [REP2-038] raised the concern of the bags degrading which could cause challenges to ensure that all the gravel material is removed. Also, NE noted that Commitment C-283 only required the removal of gravel bags after use where practicable and was not therefore a clear commitment to their removal by the Applicant.

- 3.7.69. The micro-siting of gravel bag placement was also advised by NE [REP2-038], to avoid sensitive features and that the monitoring of the gravel bag beds should be secured.
- 3.7.70. The Applicant in response [REP3-051] stated that abrasion of the underlying chalk bed would only occur if and where gravel bags or any loose gravel are moved whilst in direct contact with the natural chalk seabed, affecting the surficial layer of the seabed. Some abrasion of the surface might also occur by the action of the machinery used to lay or recover the gravel bags and gravel. The Applicant went on to explain that some abrasion might be reasonably expected to temporarily change the appearance and texture of the seabed immediately following the activity, but this is likely to recover naturally with time. It was considered by the Applicant to be unlikely that abrasion alone would cause measurable permanent or long-term changes to the gross seabed morphology or the underlying chalk. Therefore, in the Applicant's view, there would be no long-term loss of a Habitat of Principal Importance.
- 3.7.71. The Applicant [REP3-051] also confirmed that the location of gravel beds would be micro-sited to avoid sensitive features, where practicable. The Applicant also highlighted that the final plan for cable routing and associated use of gravel bags would be presented within the final Cable Specification and Installation Plan, to be submitted to and approved in writing by the MMO, as secured in Condition 11(1)(n) of the DMLs (Schedules 11 and 12) of the Recommended DCO.
- 3.7.72. At Deadline 5, NE [REP5-141] responded to the Applicant's comments on gravel bag beds by stating that marine chalk is an irreplaceable habitat and any damage to its physical structure is therefore permanent. Consequently, NE advised that it cannot recover as the Applicant had stated. NE required a full appraisal of all possible options for nearshore cable installation, with a commitment to using the methodology that minimises the environmental impacts, including the loss of irreplaceable marine chalk.
- 3.7.73. The Applicant stated [REP5-122] that given the relatively small spatial scales for the total habitat disturbance outlined above, this loss was not expected to undermine regional ecosystem functions or diminish biodiversity. Furthermore, risk assessments and method statements would be utilised to minimise the potential to damage any gravel bags when they are installed and if they are required to be removed, as confirmed by the Applicant.
- 3.7.74. At the close of Examination, NE [REP6-290] reiterated its previous advice that the gravel bags do need to be removed and therefore this should not be 'where practicable', as stated in the Applicant's commitment C-283. NE also advised that the design of the gravel bed should consider ensuring they are removable and that the bags should be monitored to ensure they remain significantly robust to be removed. NE explained that the matter may be resolvable if this point is fully addressed in the final CSIP. NE also stated that the material would have to be gravel and not sand.
- 3.7.75. The Applicant, at the final deadline of the Examination, stated that [REP6-233] it is unable to provide an unconditional commitment for the retrieval of all gravel bags due to the lack of detailed design at this stage and also the need to consider health and safety. The Applicant explains that a firm commitment to remove all gravel bags may lead to a situation where it may be necessary to rely on human diving activities for the retrieval of gravel bags, which are high risk activities.

- 3.7.76. Commitments to both micro-siting of gravel bags to avoid sensitive features, where practicable (C-297) and for gravel bags to be removed prior to the completion of construction, where practicable (C-283), have been included in the final Commitments Register [REP6-227].

Coastal horizontal direct drilling

- 3.7.77. In assessing the impact of landfall works on the coast, the Applicant stated the following [REP6-175]:

“The proposed method for cable landfall is to bury the cables beneath the beach using HDD techniques. By avoiding any direct disturbance to the coastline surface structure or morphology, and due to the absence of any infrastructure at or near the surface, this method means that, unless the cable becomes exposed (during natural sediment transport processes), there is unlikely to be interaction with or therefore impact upon coastal processes.” (Paragraph 6.8.14)

- 3.7.78. The landfall beach would be Climping Beach, which is a designated SSSI, which the Applicant has factored into the sensitivity of the coastal area for landfall [REP6-175].
- 3.7.79. Within NE’s RR [RR-265, Paragraph 5.11] it raised concerns with the use of HDD under the beach. NE noted that the sea defences at Climping have been overtopped and further weakened in recent storms, causing coastal erosion and flooding. NE went on to state that it is imperative that landfall HDD burial depths and CP options are adequately interrogated to future proof the asset integrity and minimise the need for future CP in the nearshore, intertidal and shallow areas.
- 3.7.80. In the RR from the EA [RR-116] it referenced changing coastal morphology. The EA stated that there was a rapidly changing coastal morphology at the landfall site. However, EA were confident that references in the ES Chapter 6: Coastal Processes [REP6-175] demonstrated that this has been understood by the Applicant. EA urged the Applicant to ensure that they are satisfied that the risk to their equipment is appropriately mitigated.
- 3.7.81. The Applicant responded [REP1-017] by confirming that an assessment of coastal morphology at the landfall site was undertaken. However, the Applicant explained that further ground investigation would be carried out at the landfall at the post-DCO application stage as outlined in commitment C-247 (Commitments Register [REP6-227]) and secured within the Recommended DCO Requirement 26. This Requirement means that the Applicant would need to submit a coastal erosion and future beach profile estimation assessment and a scheme identifying any mitigation or adaptive management measures required to help minimise the vulnerability of this part of the Order land from future coastal erosion and tidal flooding. This would need to be submitted to and approved in writing by the EA.
- 3.7.82. At Deadline 3 the Applicant stated [REP3-051] that at the entry and exit of the HDD, the depth of the drill would be less than 5m as the cable alignment transitions from its open cut burial depth. This transition is likely to be a few tens of metres. After this point the drill would have a depth of at least 5m. Commitment C-278 [REP6-227] refers to a 5m minimum depth under Climping Beach.
- 3.7.83. At the close of Examination, NE included this matter as a principal area of disagreement. It stated that further geotechnical data is required to inform a detailed HDD feasibility study and CBRA. NE understood the Applicant would provide this

post consent but given the level of risk it considered it inappropriate to defer proper consideration of these issues to a later date [REP6-295].

3.7.84. In its closing statement, the Applicant stated [REP6-233] that it expects the cable to be installed at a target depth of at least 5-10 metres and has committed to a minimum of 5m below surface/seabed level including at the SSSI in commitment C-278. The Applicant also sets out that the provision of the final depth is secured via the Outline Construction Method Statement [REP5-088] Section 3.4 and Requirement 23(2)(a) of the DCO and must be specified in the stage specific construction method statement for this part of the authorised development. As such, the Applicant stated that there would be no adverse effects on Climping Beach SSSI as a result of the Proposed Development.

3.7.85. There were no objections from the EA remaining at the close of Examination related to coastal processes or benthic issues, as confirmed by the SoCG submitted [REP5-095].

Suspended sediment impacts at the MCZ

3.7.86. Within the RR from NE [RR-265] it raised concerns with SSC impacting Kingmere MCZ. It stated that based on the fact the 500m sediment buffer (from the export cable Order Limit) does overlap with an area of Kingmere MCZ, it did not agree with the assessment of a minor magnitude of impact. NE advised that clearer figures should be provided by the Applicant in an updated ES chapter, and that further consideration is given to this matter in line with NE's comments on marine processes, so that the impacts on benthic features of designated sites can be clearly and fully understood.

3.7.87. At Deadline 6, NE commented [REP6-290] on the Applicant's revised Coastal Processes Technical Report: Impact Assessment [REP5-044]. NE noted that these Figures (Figures 1-1, 2-2 and 2-3) had been updated to show the MCZ boundaries where they were missing previously and made the 500m buffer relating to SSC clearer. NE stated that these figures demonstrated that both Kingmere MCZ and Offshore Overfalls MCZ are within the spring tidal excursion buffer and the 500m buffer, and that the 50m buffer appears to extend into Kingmere MCZ. NE noted also that there were no updates to the ES assessment by the Applicant [REP6-290].

3.7.88. In the Applicant's Figure 2-3 [REP5-044] it showed that the 50m buffer would be close to the Kingmere MCZ, but it was not clear if there was an incursion into the MCZ. It was, however, clear that the 500m crossed into both the Kingmere MCZ and Offshore Overfalls MCZ. Paragraph 2.9.3 of this document explains that the 0-50m buffer is the zone of highest potential SSC increase and greatest likely thickness of deposition of sediment. The 50-500m buffer is the zone of measurable SSC increase, and also measurable but of lesser thickness deposition. In this zone, more than one hour after end of active disturbance the Applicant sets out that there should be no change to SSC and no measurable ongoing deposition [REP5-044].

3.7.89. In the ES Chapter [REP6-181] it states that increased SSC and deposition are likely to occur where the array area is near the Offshore Overfalls MCZ and where the offshore ECC is in relatively close proximity to the Kingmere MCZ. However, the Applicant also set out that as detailed above, these impacts would be limited at the outer 500m zone of effect. The Applicant [REP6-181] did confirm that there would be some degree of 500m overlap:

“..the 500m zone of effect in relation to MCZs, with the only anticipated overlap to a discrete area on the northern boundary of the Offshore Overfalls MCZ and the western boundary of the Kingmere MCZ. This is also regarded as worst-case, which anticipates construction works being carried out directly on the proposed Order limits (which is not anticipated). The magnitude of the impact to neighbouring MCZ’s is therefore assessed as being minor.” (Paragraph 9.9.26)

Effects on kelp

- 3.7.90. There were numerous comments with the submitted RRs about the potential impact of the Proposed Development on kelp. For example, the Middleton on Sea Coastal Alliance stated that kelp farms are beginning to re-establish themselves and all this progress would be put back years [RR-249]. Also, Mr Woolfenden [RR-029] stated that the Proposed Development would damage marine life such as the kelp regeneration scheme for example, which is now showing results and is important for a healthy environment.
- 3.7.91. The Applicant responded [REP1-017] by stating that the impact of habitat disturbance would represent a local spatial area, a short-term intermittent impact, and affecting a relatively small portion of the benthic subtidal habitats in the proposed Order limits. However, the Applicant confirmed that the proposed ECC would enter a recently designated ‘no-trawling zone’ and a site for kelp restoration and protection. The Applicant went on to explain that due to the short-term and localised nature of this impact and the tolerance and recoverability of the majority of the benthic receptors including kelp, there is likely to be no significant effects on the seabed or for kelp reserves.
- 3.7.92. The Applicant [REP1-033] also stated that where there is a direct impact to kelp beds, this would be the removal of that species in that exact area and would have a very small footprint. In terms of the secondary impacts, these would be limited to the installation activities as kelp itself is relatively resilient and capable of recovery.
- 3.7.93. There was limited discussion on the matter of kelp impacts further into the Examination period.

Adaptive management

- 3.7.94. At Deadline 1 NE [REP1-059] highlighted its view as to the importance of securing a mechanism for adaptive monitoring when unforeseen impacts are detected. NE went on to state that there should be the aim of ensuring remedial measures/adaptive management measures are triggered, should the results of monitoring demonstrate impacts that are significantly greater than predicted and/or incorrect assumptions were made following review of the conclusions of the ES and supporting documents.
- 3.7.95. In their response to ExA WQ BP2.5 [PD-012] regarding the possible requirement for adaptive management, the Applicant [REP5-119] stated that *“on this basis and noting that the Applicant has included assessment of the potential for impacts to arise on sensitive habitats, it is unclear where the potential for impacts greater than those assessed would arise.”* However, the Applicant did state that following review of the post-construction survey works on benthic resources (if required), adaptive management would be developed and discussed if monitoring show impacts greater than anticipated.

3.7.96. The MMO [REP6-302] welcomed this commitment from the Applicant but noted that it did not appear to be reflected in Sections 6 and 7 of the IPSFMP [REP5-083].

3.7.97. In its Closing Statement [REP6-233] the Applicant reiterated that it did not consider there to be a need for establishing any further adaptive management measures associated with impacts arising for the Proposed Development works. However, the Applicant did state that adaptive management would be developed and discussed if necessary.

Coverage of impacts and worst-case scenarios

3.7.98. Within NE's RR [RR-265] it stated that in most cases it agreed with the position on worst-case scenarios, except for the following:

- Impacts to the seabed due to spud legs, anchoring and propeller wash.
- MDS sandwave clearance width and length.
- Suspended sediment, plume concentration, extent, orientation, and subsequent deposition footprint.
- Chalk drill arising nature and evolution.
- Changes to tidal conditions due to the scheme layout(s) alone or cumulatively.
- Changes to the sediment transport regime due to the scheme layout(s) alone or cumulatively.
- Temporary sand/gravel bed impacts in shallow water.

3.7.99. NE [RR-265] also stated that the following potential pressures/impacts have not been considered/assessed:

- Pre-lay grapnel run, UXO and boulder clearance.
- Impacts to the sandwave field within the array area and their recovery.
- Impacts on Kingmere MCZ due to changes in the wave regime.
- Impacts to sandbanks and sandwaves due to changes in the tidal regime.
- Extent and magnitude of overlapping wakes between the Proposed Development and the Rampion 1 OWF.
- Impacts in the nearshore, inter-tidal and shallow areas due to the presence of CP measures during operation.
- Paleo-channel infill substrate scour.

3.7.100. The Applicant's response [REP1-017] was that these specific identified potential pressures/impacts are accounted for and included within the MDS envelope for each potential impact type within the ES. The Applicant also responded [REP1-017] to points raised by NE.

3.7.101. For example, for jack-up vessels and (to a lesser extent) vessels with anchors, the Applicant stated [REP1-017] that any actual indentations in the seabed left by such activities have not previously been identified as a meaningful potential or actual impact to coastal processes receptors. As such, the Applicant stated that this is not normally scoped into the coastal processes assessment. However, the MDS jack-up leg footprints on benthic ecology receptors is assessed in the ES [REP6-181].

3.7.102. The Applicant explained [REP1-017] that a pre-Lay Grapnel Run and UXO clearance are common preparatory activities as part of cable burial. The Applicant stated that the potential impacts of these activities are considered by the Applicant to be already contained and assessed within the MDS envelope for cable burial.

- 3.7.103. The Applicant [REP1-017] stated that direct impacts on sandwaves (such as localised levelling) would only temporarily redistribute sediment volume locally and therefore features are likely to recover.
- 3.7.104. In relation to the reduction in wave height, the Applicant [REP1-017] set out that it would be small in relative and absolute terms, and comparable to the normal range of natural variability. As a result, according to the Applicant, no measurable change to the environmental processes (waves or sediment transport) in the Kingmere MCZ was identified.
- 3.7.105. In regard to overlapping wakes between the Proposed Development and Rampion 1 OWF, the Applicant [REP1-017] stated that for two wakes to overlap, the effect would need to both remain measurable over the distance between foundations (many hundreds of metres) and happen to coincide spatially. Should this effect arise, both conditions are highly unlikely to result in any meaningful additive effect other than that already described for all the individual foundation, according to the Applicant.
- 3.7.106. Changes to the nearshore wave regime/ longshore sediment transport due to the presence of CP measures were assessed by the Applicant [REP1-017]. It concluded that *“if cable protection is installed at the landfall it will be installed with a sufficiently low profile relative to the surrounding bed to present minimal barrier to the passage of waves and so cause no change to long term patterns of sediment transport”*. (Point D5).
- 3.7.107. The above paragraphs are examples of the Applicant’s responses to the NE comments at RR stage.
- 3.7.108. There was no substantive response from NE on these points made at Deadline 1 by the Applicant, but NE did raise a similar concern in the SoCG [REP6-266] at point NE41, stating that it had concerns regarding the submitted worst-case scenarios for a number of issues. To this point, the Applicant in the SoCG stated that *“these specific identified potential pressures/impacts are considered by the Applicant to be accounted for and included within the MDS envelope for each potential impact type”*. The Applicant also highlighted the submission of both the Outline Cable Specification and Installation Plan [REP5-126] document and an Outline Cable Burial Risk Assessment [REP5- 123] at Deadline 5 which also further addresses some of these issues.

Use of chemicals and substances

- 3.7.109. Condition 9(1) of the DMLs (Schedule 11 and 12) of the draft DCO [REP6-007] states the following:
- 9.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002(b) (as amended)*
- 3.7.110. In response to this draft DCO Condition the MMO [REP6-302] referred to the *List of Notified Chemicals* and stated that the Chemicals on this list have been modelled using oil and gas structures and the use of these chemicals in offshore wind is different and require further review. MMO explain that the offshore chemical regulations 2002(a) (as amended) do not apply to chemicals used by the offshore

wind industry. The MMO propose the following in substitute for Condition 9(1) of the draft DCO:

Unless otherwise agreed in writing by the MMO, all chemicals and substances, including paints and coatings, used below MHWS for the undertaking of the licensed activities must be approved in writing by the MMO prior to use. Submission for approval to the MMO must take place no later than ten weeks prior to use, unless otherwise agreed by the MMO in writing.

3.7.111. MMO require a period of 10 weeks before use (MMO initially proposed 8 weeks in its RR). MMO explain that the reason for these changes is because eight weeks is the time Cefas require to review and provide comments, with the additional two weeks necessary ensure the internal consultation process can be followed.

3.7.112. In the SoCG between the MMO and the Applicant [REP6-241], the Applicant responded to this request from MMO by stating that:

“The wording has not been amended as it is consistent with the approach adopted in a number of previously granted DCOs for windfarms including the Hornsea Four Offshore Wind Farm Order, 2023, in order to provide prior approval for some chemicals. Written approval will be required for the use of any chemical not included in the list approved under the Offshore Chemicals Regulations 2002.”

ExA’s Findings

3.7.113. NPS EN-1 2011 states that *“development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives... where significant harm cannot be avoided, then appropriate compensation measures should be sought”* (Paragraph 5.3.7). In relation to MCZs, NPS EN-1 2011 sets out that *“the protected feature or features and the conservation objectives for the MCZ are stated in the designation order for the MCZ, which provides statutory protection for these areas”* (Paragraph 5.3.12)

3.7.114. Section 5.5 of NPS EN-1 2011 covers the topic of coastal change. It states that *“where onshore infrastructure projects are proposed on the coast, coastal change is a key consideration”* and that developments can be a *“driver of coastal change”* and considers how *“developments are resilient to ongoing and potential future coastal change”* (Paragraph 5.5.2).

3.7.115. NPS EN-1 2011 on this matter continues by stating that the Secretary of State should be satisfied that the Proposed Development will be resilient to coastal erosion and deposition, taking account of climate change, during the project’s operational life and any decommissioning period.

3.7.116. Within NPS EN-3 2011, specifically in relation to OWFs, it states that *“export cable routes will cross the intertidal zone resulting in habitat loss, and temporary disturbance of intertidal ecology”* (Paragraph 2.6.80). It also requires that the Secretary of State should be satisfied that cable installation and decommissioning has been designed sensitively taking into account intertidal habitat (Paragraph 2.6.85). The NPS EN-3 does acknowledge that *“Effects on intertidal habitat cannot be avoided entirely. Landfall and cable installation and decommissioning methods should be designed appropriately to minimise effects on intertidal habitats, taking into account other constraints.”* (Paragraph 2.6.88)

- 3.7.117. In relation to subtidal effects, NPS EN-3 2011 requires that the Secretary of State should be satisfied that activities have been designed taking into account sensitive subtidal environmental aspects (Paragraph 2.6.116). It should also be considered by the Applicant the extent to which the effects are temporary or reversible (Paragraph 2.6.117). Furthermore, paragraph 2.6.119 states that *“Construction and decommissioning methods should be designed appropriately to minimise effects on subtidal habitats, taking into account other constraints.”*
- 3.7.118. In terms of marine physical environment effects, such as sediment transport, scour effect, wave and tidal effects, the NPS EN-3 2011 requires that assessment should include predictions of the physical effect that will result from the construction and operation of the required infrastructure (Paragraph 2.6.194). Furthermore, this NPS states that the Secretary of State should be satisfied that the methods of construction, including use of materials, are such as to reasonably minimise the potential for impact on the physical environment (Paragraph 2.6.196).
- 3.7.119. Much of the policy requirements from the 2011 NPSs are reflected in the 2024 versions. In terms of coastal processes, NPS EN-1 2024 requires that the Secretary of State *“should be satisfied that the proposed development will be resilient to coastal erosion and deposition, taking account of climate change, during the project’s operational life and any decommissioning period.”* (Paragraph 5.6.16)
- 3.7.120. In relation to intertidal and coastal habitats, NPS EN-3 2024 states that *“Where applicable, use of HDD techniques should be considered as a method to avoid impacts on sensitive habitats and species.”* (Paragraph 2.8.228)
- 3.7.121. Mitigation methods for subtidal habitats and species include the requirement to consider *“surveying and micro-siting of the turbines, designing array layout, or re-routing of the export and inter-array cables to avoid adverse effects on sensitive/protected habitats, biogenic reefs or protected species”* (Paragraph 2.8.234).
- 3.7.122. Policy S-BIO-1 of the South Inshore and South Offshore Marine Plan (July 2018) is particularly relevant, stating that *“Proposals that may have significant adverse impacts on natural habitat and species adaptation, migration and connectivity must demonstrate that they will, in order of preference: a) avoid, b) minimise c) mitigate significant adverse impacts.”*
- 3.7.123. The ExA recognises that the Applicant has based a degree of its assessment on predictive modelling. The ExA do accept some of the benefits which this could have, such as providing a broader picture for the benthic characterisation. However, it is important to note that the Applicant has undertaken surveys, and the information from these site-specific surveys have been used to augment the habitat model. ExA is satisfied, from the evidence before it, that the evidence relating to benthic characterisation is sufficiently robust for this stage in the process.
- 3.7.124. The ExA does also agree with NE that a pre-construction survey is necessary, which would provide crucial site-specific data. This is secured through Condition 16 of both DMLs in Schedule 11 and 12 of the Recommended DCO.
- 3.7.125. On this basis, the use of predictive modelling is in accordance with the requirements for assessments of benthic habitats as set out in both the 2011 and 2024 NPS EN-1 and EN-3.

- 3.7.126. The ExA recognise that NE in particular requested more geotechnical information and data provided prior to the close of Examination. However, it was clear from the Applicant that this was not to be provided pre-consent, especially given the time constraints of Examination and the costs involved. The Applicant is aware of sensitive species and habitats that exist in this seabed area from the data it does have. The Applicant is also aware of the chalk that makes up much of the seabed area and its value as a habitat. Indeed, the Applicant has included an initial routing design exercise for the export cable which includes avoidance of possible black seabream nesting sites and biogenic reefs, for example [REP5-082, Figure 5.1]. However, this would have to be refined based on pre-construction data.
- 3.7.127. Pre-construction surveys and monitoring are secured through the Recommended DCO Condition 16 of both DMLs (Schedule 11 and 12). This specifically includes reference to *“a survey to determine the location, extent and composition of chalk habitats, stony reef and potential Sabellaria spinulosa reef features, potential nesting sites for black seabream, and peat and clay exposures as set out within the outline in-principle monitoring plan”*. Furthermore, the Outline CBRA [REP5-123] states that *“Geophysical and geotechnical surveys will be carried out before works commence and the information from those surveys will allow route debris, boulders, archaeological features, UXO presence, seabed features, sediment depth and the nature of the seabed to be determined.”* A final CBRA, which accords with the outline CBRA [REP5-123], is secured through the Condition 11n(iii) of both DMLs (Schedule 11 and 12) within the Recommended DCO.
- 3.7.128. With a combination of the data and information submitted with the application and the geotechnical data and survey results which would follow any consent, the ExA are satisfied that there is both sufficient evidence at this pre-consent stage and that the requirement for necessary data is secured to be collected post-consent to ensure the mitigation as proposed is successful. For instance, the pre-construction survey should allow for effective micro-siting of sensitive features and habitats.
- 3.7.129. In terms of the valuable chalk habitat, both NE and the Applicant agree that it cannot be entirely avoided. However, the Applicant has committed to micro-siting to avoid subtidal chalk (where possible) (C-269) and also the adoption of specialist offshore export cable laying and installation techniques to minimise the direct and indirect seabed disturbance footprint (C-272) [REP6-227]. The HDD under the coast and the intertidal area should also help to avoid chalk areas, although the details of how far from the coast the HDD could extend offshore is not determined at this point.
- 3.7.130. ExA are satisfied that the Proposed Development, whilst not being able to avoid all chalk impact, would mitigate and reduce its potential impacts as much as reasonably possible.
- 3.7.131. It is clear that due to geological conditions, among possible other reasons, it is likely that some CP would be necessary. The maximum amount of CP is set out, though Commitment C-300 [REP6-227] states that a type of CP would be used that minimises the environmental impacts as far as practicable and that consideration would be given to using the method of CP which is likely to be removable at decommissioning.
- 3.7.132. If CP is to be used, the ExA is reassured that through Condition 11(i) of both DMLs (Schedule 11 and 12) in the Recommended DCO the MMO would have control over acceptance of the final CP Plan (which should accord with the Outline Scour

Protection and Cable Protection Plan [REP5-074]). This would include the choice of CP to be used. It is understood that bagged CP would have clear benefits in terms of it being removable. The material of the bags is also an important aspect, with the avoidance of micro-plastic release a factor. However, there is no final choice of CP before the ExA, but the ExA is satisfied that there are types of CP possible which would reasonably reduce any offshore impacts.

- 3.7.133. At Deadline 5 there was the submission of the Outline CBRA [REP5-123] and the Outline CSIP [REP5-126]. These both provided further information on the cable route effects and about the installation approach. ExA acknowledge that these documents were not based on detailed geotechnical data, which contributed to NE stating they were insufficient [REP6-295]. However, there were numerous other points made about the documents from NE at the final deadline (Deadline 6) which the Applicant did not have an opportunity to respond to. The Secretary of State may wish to consult the Applicant, to allow the opportunity to respond to the points made by NE regarding both the Outline CBRA and CSIP. This would possibly result in many of the NE points being resolved if amended versions were submitted pre-consent.
- 3.7.134. ExA recognise that for most of the points of concern raised by NE [REP6-290] the Applicant would need to adequately respond through final versions of the CBRA, CSIP, or the SFMP. This would likely have to be after the geotechnical data and the pre-construction survey information was gathered. It is the view of the ExA that the mitigation as proposed, such as the use of cable burial where possible and the micro-siting of the cable route away from most sensitive features, are achievable, though this would be controlled by MMO through the requirements of the Recommended DCO to approve the final versions of the relevant documents, such as the final CBRA for example.
- 3.7.135. The ExA have noted the request from NE that there should be a requirement for the DCO/DML to secure signoff and agreement by the MMO, in consultation with the relevant SNCB, of all final named plans. However, being a DML this is primarily the duty of MMO, and the ExA do not recommend a change in the DMLs wording on this matter. It would also be an option for the MMO to consult with NE on the final named plans when they are submitted by the Applicant, but this would be a decision for the MMO.
- 3.7.136. The ExA are satisfied that the Proposed Development, in relation to cable laying and routing effects, is designed appropriately at this stage to minimise effects on benthic, subtidal and intertidal habitats and ecology, taking into account all constraints, thereby being in accordance with NPS EN-1 and EN-3 on this matter.
- 3.7.137. According to NE, the floatation pits used with Rampion 1 OWF caused damage to the seabed. Gravel bag beds are proposed as an alternative. However, it is clear from the submitted evidence that the weight of gravel bags could cause abrasion and compaction to the chalk, which itself is an important habitat. However, the ExA welcomes the commitment from the Applicant to micro-site gravel bags to avoid sensitive features, where practicable, and for gravel bags to be removed prior to the completion of construction, also where practicable.
- 3.7.138. The ExA understands that there may be certain reasons why full retrieval of gravel bags may not be possible, but this should be in exceptional circumstances, especially if the installation is planned appropriately and suitable material bags are

used. Micrositing would also minimise the effect of the gravel bags on sensitive marine features.

- 3.7.139. The ExA also recognise that the final plan for cable routing and associated use of gravel bags is required to be submitted within the final Cable Specification and Installation Plan, to be submitted to and approved in writing by the MMO, as secured in Condition 11(1)(n) of the DMLs (Schedules 11 and 12) of the Recommended DCO. As such, MMO have control over the acceptance of the final relevant details for this matter.
- 3.7.140. On this basis, if gravel bag beds are necessary to be used, the impacts to sensitive features would be minimised as required by NPS EN-1 and EN-3 2011.
- 3.7.141. The Applicant has committed to use of HDD under the coastal area, including Climping Beach SSSI. The Applicant has also committed to a minimum depth of 5m for the cables under the beach area. Nonetheless, without geotechnical data the concern remains from NE as to whether this depth is possible and how changing beach morphology could affect the cables in the future. The ExA acknowledge that if the depth of HDD is not sufficient this could result in the exposure of the cables and remediation works being necessary.
- 3.7.142. The Applicant has included the requirement for a coastal erosion and future beach profile estimation assessment (Requirement 26) to be agreed in writing by the EA. The ExA considers this an important Requirement, ensuring sufficient investigation and assessment is undertaken before HDD installation.
- 3.7.143. It is the view of the ExA that there is no substantive evidence to suggest that a suitable depth cannot be achieved for the coastal HDD, especially considering the wide Order limits in this location allowing for flexibility. The ExA also note the lack of objection from the EA on this matter. Furthermore, the Applicant has only proposed and assessed the HDD approach for landfall and so there cannot be an alternative used for this Proposed Development. As such there is no risk of effects of open trenching, for example.
- 3.7.144. Following the appropriate investigation and assessment of the geotechnical data to be gathered at the coastal/landfall area, the HDD under the coast and particularly the Climping Beach SSSI is an appropriate approach to ensure no harmful impacts to the beach or coast. Furthermore, the requirement for a coastal erosion and future beach profile estimation assessment (Requirement 26) should ensure that the Proposed Development would be resilient to ongoing and potential future coastal change for the lifetime of the development. For these reasons, the proposed landfall connection works would be in accordance with NPS EN-1 2011 and EN-3 2011.
- 3.7.145. The ES [REP6-181] recognises the overlap with the Kingmere and Offshore Overfalls MCZs with the 500m buffer and assesses the impacts as minor. The ExA recognise that the overlap of the 500m buffer is small areas of both MCZs. Furthermore, the SSC in the 500m zone would be temporary and does not imply that it would result in significant risks of the act hindering the achievement of the conservation objectives stated for the MCZs. For example, the Applicant has stated that more than one hour after end of active disturbance there would be no change to SSC and no measurable ongoing deposition [REP5-044].
- 3.7.146. It is not clear from the submitted evidence whether there is any overlap of the 50m sediment zone into the Kingmere MCZ. A more detailed plan would be necessary

for this. However, the ES [REP6-081] only refers to an overlap with the 500m zone, which indicates that the Applicant does not consider there to be an overlap with the 50m zone. If there was such an overlap of the 50m zone into the Kingmere MCZ it would be a relatively very small area and so likely to be minor in its impact to the MCZ. However, if the Secretary of State was not satisfied with the evidence submitted, the Secretary of State may wish to seek further information from the Applicant as to any overlap of the 50m sediment zone, and if there was such an overlap to confirm the extent of the impact.

- 3.7.147. The ExA also refers to the commitment (C-273 within the Commitment Register [REP6-227]) to have a seasonal restriction for cable installation works, to ensure offshore ECC installation activities are undertaken outside the black seabream breeding period (March-July inclusive) to avoid any effects from installation works on active black seabream nesting (such as within Kingmere MCZ). This would have the benefit of reducing SSC from the cable corridor adjacent to Kingmere MCZ and nesting black seabream as there would be no cable installation works at that time. The nesting black seabream is an important feature of the Kingmere MCZ, as explained in more detail in Section 3.6 (Fish and Shellfish). As such, this commitment would be particularly beneficial for the conservation objectives of the Kingmere MCZ.
- 3.7.148. Overall, the ExA agrees with the Applicant on this matter that no residual SSC effect on the MCZs would hinder their conservation objectives.
- 3.7.149. The ExA recognise the importance of kelp and that Sussex Bay has regenerating kelp beds. It is accepted by the Applicant that the offshore works, particularly the export cable installations, would result in some loss of kelp beds. However, this should be a relatively small amount. There could also be some indirect impacts, such as from SSC, but again this should be temporary as an impact and localised to the installation works and so would not impact wider areas where kelp beds could be.
- 3.7.150. From the evidence the ExA agree with the assessment of the Applicant that the residual impacts on kelp beds would be not significant.
- 3.7.151. The ExA recognises the potential for monitoring surveys to identify effects either greater than those envisaged or deficiencies in the mitigation being applied. In such circumstances, it would be necessary to adopt an adaptive approach so that different means and methods of mitigation could be imposed to reduce any adverse effects to an acceptable level. The ExA notes the respective parties' positions on this matter, but nonetheless considers that there is currently no obligation in the draft DCO on the Applicant, via its monitoring processes, to work towards appropriate remedial or adaptive management measures if necessary. Whilst the ExA acknowledges the Applicant may not be able to immediately undertake appropriate action, perhaps for reasons of needing a new Marine Licence, ExA regard adaptive management as necessary and should be secured.
- 3.7.152. The ExA therefore considers, to strengthen the Offshore IPMP and provide reassurance that ongoing monitoring would contribute towards ongoing effective mitigation, an additional part of the post-construction Conditions should be included in the DMLs. This wording requires the Applicant to proactively seek solutions to remedy any situation where the effects of the Proposed Development, post-mitigation, are more adverse than what was anticipated. The ExA therefore recommends, as reflected in the Recommended DCO, that the following additional

sub-paragraph 5 to DML Conditions 18 (of Schedules 11 and 12), which adds the following:

(5) In the event that the reports provided to the MMO under sub-paragraph (3) identify impacts which are unanticipated and or beyond those predicted within the Environmental Statement and the Habitats Regulations Assessment an adaptive management plan to reduce effects to within what was predicted within the Environmental Statement and the Habitats Regulations Assessment, unless otherwise agreed by the MMO in writing, must be submitted alongside the monitoring reports submitted under sub-paragraph (3). This plan must be agreed by the MMO in consultation with the relevant statutory nature conservation bodies to reduce effects to an agreed suitable level for this project. Any such agreed and approved adaptive management or mitigation should be implemented and monitored in full to a timetable first agreed in writing with the MMO. In the event that this adaptive management or mitigation requires a separate consent, the undertaker shall apply for such consent. Where a separate consent is required to undertake the agreed adaptive management or mitigation, the undertaker shall only be required to undertake the adaptive management or mitigation once the consent is granted.

- 3.7.153. The Secretary of State may wish to seek the views of NE, the MMO and the Applicant on the proposed wording in the Recommended DCO.
- 3.7.154. Furthermore, it is important to note that this requirement for adaptive management would apply to post-construction monitoring for all offshore topics, and so would have benefits beyond benthic or coastal matters. In terms of monitoring, there have been comments about the IPMP, such as the MMO stating that there should be monitoring of black seabream nests [REP6-302]. These comments have all been considered by the ExA, though these matters can be agreed post-consent through the secured pre and post construction monitoring plans which need to be approved by the MMO, based on the data and information collated through the Applicants detailed surveys and geotechnical results at that time.
- 3.7.155. The points raised by NE about a number of offshore matters, particularly in relation to benthic and coastal processes issues, have been sufficiently addressed by the Applicant, particularly in the Deadline 1 [REP1-017] response. Further information was also submitted throughout the course of Examination. The ExA do acknowledge that NE's concerns remained at the end of Examination given that it was included within the SoCG [REP6-266]. ExA also note that this matter was not within NE's PADS submission [REP6-295].
- 3.7.156. ExA regard these matters to have been sufficiently addressed by the Applicant through its assessments for this pre-consent stage. For matters such as sandwave clearance or grapnel runs, these are expected as part of an OWF development, which have been covered by the Applicant. However, on the matters relating to cable installation, the final CBRA and CSIP would have much more detail, with both of these documents required under Condition 11 of both DMLs (Schedule 11 and 12) of the Recommended DCO, to be submitted to and agreed by the MMO. As such, there is this control which the MMO would have prior to the proposed offshore works commencing.
- 3.7.157. With regards to the MMO advised change to Condition 9(1) of the DMLs (Schedule 11 and 12) of the draft DCO [REP6-007], it is accepted by the ExA that the list referred to by the Applicant is not fully applicable to OWF, given that it is approved for use by the offshore oil and gas industry. This results in some uncertainty that all

of the chemicals and substances that may be used with the Proposed Development below MHWS might not be acceptable to the MMO. It may be that previous OWF DCOs have used the same wording as proposed by the Applicant, but the MMO have provided compelling reason as to why the wording it proposes is more appropriate to safeguard the marine environment from harmful chemicals and materials.

3.7.158. As such, the ExA have included the revised section of Condition 9 as follows:

Unless otherwise agreed in writing by the MMO, all chemicals and substances, including paints and coatings, used below MHWS for the undertaking of the licensed activities must be approved in writing by the MMO prior to use. Submission for approval to the MMO must take place no later than ten weeks prior to use, unless otherwise agreed by the MMO in writing.

3.7.159. The ExA note that the MMO included a period of 10 weeks before use for the list of chemicals and materials to be submitted to the MMO for approval. However, the MMO initially proposed 8 weeks earlier in the Examination. The Secretary of State should be aware that the Applicant has not had an opportunity to respond on the additional 2 weeks required in this Condition 9(1) as set out in the Recommended DCO.

3.7.160. There were other matters raised through the many correspondences, received both at RR stage or during the Examination which are relevant to this Section. However, whilst these matters have been considered by the ExA they do not, either individually or cumulatively, alter the ExA overall conclusion that coastal processes or benthic ecology matters result in minor adverse level of effect to on these matters. As a result, this has a minor negative weight against the making of the Order being accordingly attached.

Conclusions

3.7.161. The ExA concurs with ES Chapter 6 Coastal Processes [REP6-175] and ES Chapter 9 Benthic, Subtidal and Intertidal Ecology [REP6-181] that the significance of residual effect from the Proposed Development on these matters would be no greater than Negligible to Minor Adverse (Not Significant) from any phase of development. However, to ensure no greater impacts than assessed in the ES the ExA recommends the inclusion of an additional sub-paragraph (5) to DML Conditions 18 (of Schedules 11 and 12) which requires the need for adaptive management which would be necessary if the post-construction monitoring identified significant adverse effects post-mitigation.

3.7.162. The ExA is satisfied that the Applicant has demonstrated that the impacts associated with the Proposed Development can be satisfactorily mitigated and managed through the commitments identified in the Commitment Register [REP6-227], which are secured by the relevant Requirements and Conditions in the Recommended DCO/DML, along with the additional sub-paragraph (5) to DML Conditions 18 (of Schedules 11 and 12) within the Recommended DCO.

3.7.163. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 and with other national and local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.

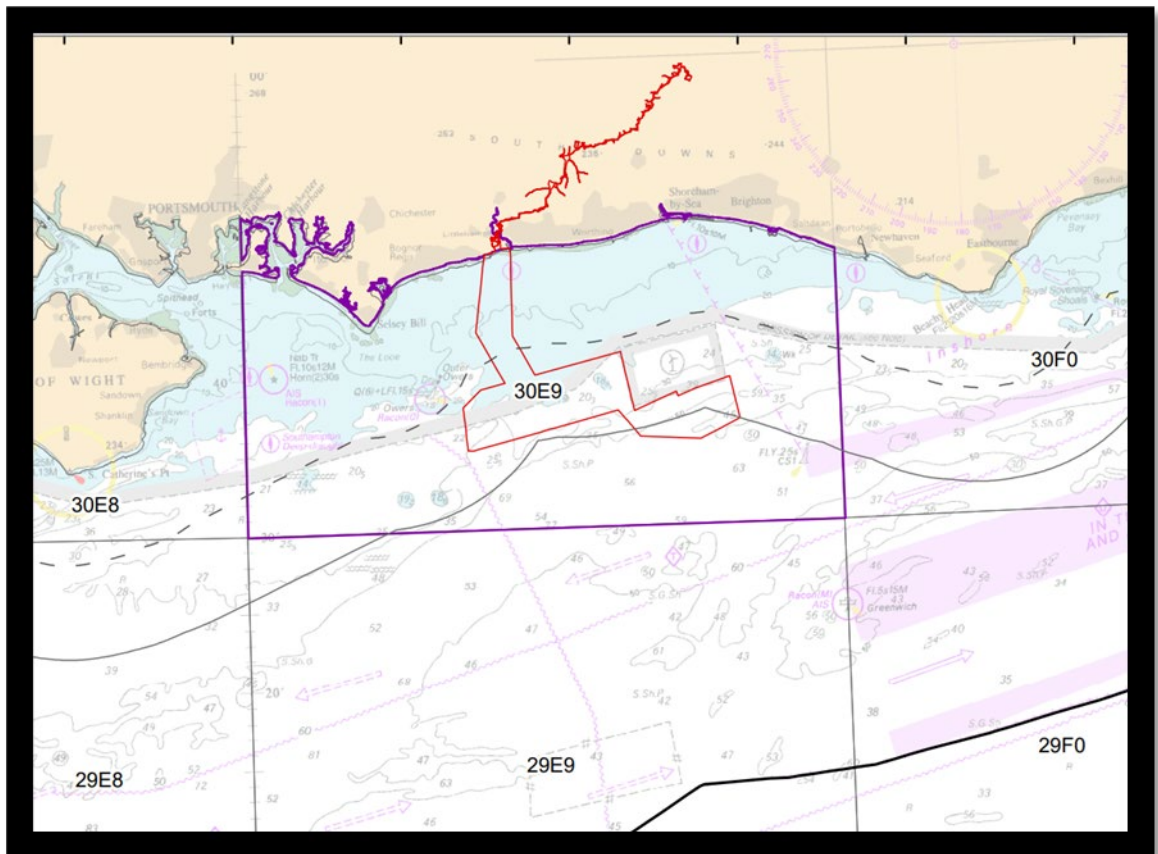
- 3.7.164. The ExA attaches a Little Negative weight to this effect for both coastal processes and also benthic, subtidal and intertidal ecology matters in the planning balance.
- 3.7.165. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to coastal process and benthic, intertidal and subtidal ecology and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.8. COMMERCIAL FISHERIES

The Applicant's Case

- 3.8.1. It is Chapter 10 (Originally submitted [APP-051], then superseded at Deadline 6 [REP6-121]) which concerns the assessment of the Proposed Development on commercial fishery matters, together with the associated figures for this chapter [APP-083]. The Applicant also submitted a Commercial fisheries technical baseline report [APP-146] and an Outline Fisheries Liaison and Co-existence Plan (FLCP) (latest version submitted at Deadline 6 [REP6-222]).
- 3.8.2. Also relevant to commercial fishing within the ES is Chapter 8 (Fish and Shellfish) [REP6-191] with Figures [REP6 191], and also Chapter 13 (Shipping and Navigation [REP6-127] with Figures [APP-086].
- 3.8.3. The ES [REP6-121] provides the scope of the assessment of commercial fisheries. The International Council for the Exploration of the Sea (ICES) provides Division areas for the seas around the UK. R2 is set within ICES Division 7d (eastern English Channel). ICES Division 7d is divided into statistical rectangles, with Order limits for the Proposed Development set within ICES rectangle 30E9, as shown on Figure 11 below:

Figure 11 – ICES Rectangle 30E9 [APP-083]



- 3.8.4. The Applicant has defined the study area as ICES rectangle 30E9. However, the Applicant also stated that where relevant, commercial fisheries activity in adjacent ICES rectangles is also described and considered in the ES Chapter [Paragraph 10.4.3, REP6-121]. The Applicant explains that the temporal scope of the assessment for commercial fisheries is consistent with the period over which the Proposed Development would be carried out and therefore covers the construction (around four years), operational (around 30 years) and decommissioning periods [Paragraph 10.4.6. REP6-121].
- 3.8.5. Potential receptors have been identified in the ES [REP6-121] and set out in Table 10-7, such as the potting fleets.
- 3.8.6. The ES [REP6-121] goes on to identify all potential effects on commercial fisheries receptors which were scoped in for further assessment in Table 10-8. These include:
- A reduction in access to, or exclusion from established fishing grounds.
 - The displacement leading to gear conflict and increased fishing pressure on adjacent grounds.
 - The disturbance of commercially important fish and shellfish resources leading to displacement or disruption of fishing activity.
 - Increased vessel traffic associated with the Proposed Development within fishing grounds leading to interference with fishing activity.
 - Additional steaming to alternative fishing grounds for vessels that would otherwise fish within the Proposed Development area.

- Physical presence of infrastructure leading to gear snagging.

- 3.8.7. These potential effects are considered possible for all stages of development, from construction through to decommissioning, except for the effect of the physical presence of infrastructure leading to gear snagging, which would only occur in the operational phase.
- 3.8.8. The ES addresses the issue of effects on Fish and Shellfish species, some of which being commercially important species, in Chapter 8 [REP6-179]. The ExA has addressed the effect of disturbance of black seabream and herring in Section 3.6. Other species, such as the effect on brown crab, are considered in this section, linked with the effect to commercial fisheries.
- 3.8.9. Section 10.5 of Chapter 10 sets out the ES data collection process [REP6-121]. Data sources used are listed in Table 10-9, which includes, for example, MMO landing statistics, European Union (EU) landing statistics for EU countries such as Belgium and France, and marine traffic survey data from Anatec. Table 10-9 contains the full list and details.
- 3.8.10. The maximum parameters and assessment assumptions for impacts on commercial fisheries has been identified within the ES in Table 10-11 [REP6-121]. For the construction phase, generally the table indicates that the maximum assessment representing the worst-case scenario would be for the maximum duration and extent of fishing exclusion throughout the construction phase, thereby restricting access to fishing grounds. Furthermore, the maximum number of WTGs and associated infrastructure would lead to the highest level of construction activities and therefore highest level of construction vessel round trips. Broadly, for many of the potential effects, it is the longest period of construction and exclusion to fishing grounds, along with the greatest extent of offshore infrastructure, which would represent the worst-case scenario.
- 3.8.11. As set out in Table 10-20 of the ES [REP6-121] the assessment concluded that without any mitigation there would be no more than Minor Adverse (not significant) effects on most receptors, for all phases of the Proposed Development, and for each type of commercial fishing fleet. The exception is for the potting fleet, where there is assessed to be a minor adverse residual effect (not significant) though with embedded mitigation measures for most effects in all phases.
- 3.8.12. In respect to the potting fleet, with regard to the effect from the activities relating to snagging, the ES [REP6-121] assesses the effect is of moderate adverse significance, which the Applicant terms as Potentially Significant in EIA terms (Paragraph 10.9.19).
- 3.8.13. The embedded mitigation measures referred to above are set out in detail in Table 10-12 of ES [REP6-121]. This sets out the commitments which are contained within the Commitments Register [REP6-227]. This contains, for example, the following:
- C-45 - Where possible, subsea cable burial will be the preferred option for CP. Cable burial will be informed by the cable burial risk assessment and detailed within the Cable Specification and Installation Plan.
 - C-47 - Ongoing liaison with fishing fleets will be maintained during pre-construction, construction, maintenance and decommissioning operations via an appointed Fisheries Liaison Officer and Fishing Industry Representative to

ensure that the fishing community are fully informed of any offshore activities and works.

- C-90 - The Applicant being committed to ongoing liaison with fishermen throughout all stages of the Proposed Development, based upon Fishing Liaison with Offshore Wind and Wet Renewables (FLOWW) (2014, 2015) guidance.
- C-91 - Appointment of a company Fisheries Liaison Officer (FLO) will be undertaken to maintain effective communications between the project and fishermen.
- C-92 - Appropriate liaison will be undertaken with relevant fishing interests to ensure that they are fully informed of development planning and any offshore activities and works.
- C-194 - The Applicant will develop a FLCP. The FLCP will capture all commitments made by the Applicant relevant to commercial fisheries. The FLCP will be finalised prior to the commencement of project construction.

3.8.14. Conditions contained within Schedule 11 and 12 (DMLs) of the Recommended DCO, such as No 5 (Notification and Inspections); No 6 (Aids to Navigation); No 11 (Pre-Construction Plans and Documentation); No 13 (Safety Zones); No 14 (Offshore Safety Management), relate to commercial fisheries. In particular, Condition 11(g) of both Schedules sets out a requirement for a FLCP which would accord with the outline FLCP [REP6-222].

3.8.15. The outline FLCP [REP6-222] includes, among other things, such provisions as:

- The appointment of a Company Fisheries Liaison Officer (CFLO),
- The contracting of one or more Fisheries Industry Representatives.
- Utilise fisheries support vessels, such as guard vessels or pilot vessels.
- Information dissemination.
- Navigation safety measures.

3.8.16. The Outline FLCP [REP6-222] also sets out procedures to be followed in relation to fishing gear fastening or loss, and the procedure for gear location or removal. Further mitigation measures (Section 3.5) address potential cooperation agreements and associated payments. Paragraph 3.5.3 explains that the Applicant would follow FLOWW guidance in relation to this, with co-operation agreements and associated disruption payments only to be established on the basis of factually accurate and justifiable claims to achieve a position whereby fishing interests are neither advantaged nor disadvantaged. The Outline FLCP makes clear it would be for the affected fishers to provide evidence to corroborate any claims.

3.8.17. Paragraph 3.5.6 [REP6-222] goes on to explain that if mutual agreement cannot be reached then both parties should seek to undertake Alternative Dispute Resolution (ADR), in line with FLOWW (2015) guidance, with mediation the preferred method.

3.8.18. With the mitigation in place the ES [REP6-121] assesses that the effects on the potting fleet would be no worse than minor adverse (not significant).

3.8.19. In the assessment of cumulative effects [REP6-121, Section 10.12] other developments such as existing offshore windfarms were considered. In all cases it was considered that the combined magnitude does not raise the cumulative impact of the Proposed Development with other developments above that already assessed for the Proposed Development alone.

3.8.20. In terms of transboundary effects, for commercial fisheries the ES [REP6-121, Section 10.13], following a screening exercise, considered the effects on

commercial fishing fleets as a result of impacts from the Proposed Development on commercial fish stocks in the waters of other European Economic Area (EEA) States. The ES also addressed the effects on commercial fishing fleets from all EEA countries as a result of constraints on foreign commercial fishing activities operating in the Order limits, including demersal trawling, beam trawling and pelagic trawling.

- 3.8.21. With the effects on fish and shellfish stock the ES identified France as potentially affected. However, based on the minor to negligible significance of disruption to commercial species during all phases of the Proposed Development, it is expected that the impact on stocks in the French EEA is negligible. Furthermore, the effects on foreign commercial fishing fleets from EEA states, in terms of reduction in access to grounds within the proposed array area and displacement into alternative grounds including other EEAs were considered in the assessment and were found by the ES to be minor for all non-UK EEA states.
- 3.8.22. Chapter 30 of the ES [REP6-165] considered inter-related effects. However, whilst considering commercial fisheries with other effects relating to shipping and navigation, or fish and shellfish, the Applicant stated that the assessment of potential effects for commercial fisheries inherently considered the receptor-led inter-related effects for potential interactions. This included the inter-related effect from the combination of the reduction in access to fishing grounds and the subsequent increased pressure on adjacent grounds. Also, it is considered by the Applicant that appropriately mitigated loss of access would limit the impact of displacement and that overall, any inter-related effect would not be of any greater significance than those already assessed in isolation. Therefore, project-lifetime inter-relationships on commercial fisheries were not considered further in the ES Chapter 30.
- 3.8.23. It should also be noted that within the ES is Chapter 8 (Fish and Shellfish) [REP6-191] concluded its assessment on all potential impacts with a residual effect of no worse than minor adverse. Similarly, within Chapter 13 (Shipping and Navigation [REP6-127] the assessment on all potential impacts concluded that the residual effects after mitigation would be either tolerable or broadly acceptable (not significant in EIA terms).

Examination Issues

- 3.8.24. The main issues in the Examination were:
- Displacement of fishing fleets and restrictive access.
 - Compensation and associated disruption payments.
 - Effect of the Proposed Development on commercial fish and shellfish.
 - French Government issues raised regarding fisheries.

Displacement of fishing fleets and restrictive access

- 3.8.25. The RR from commercial fishing company Monteum Limited [RR-251] raised the issue of displacement of fishing fleets due to restrictive access, such as during the construction process. Monteum Limited stated that the construction phase of the Rampion 1 OWF caused much disturbance to the fishing industry. Monteum Limited claimed that it displaced commercial and domestic vessels out of the Rampion 1 OWF area and concentrating them and the fishing fleets' associated fishing gear in the surrounding areas. This then led to increased gear conflict between fishermen and what Monteum Ltd termed as "bad blood" between different fishing crews. Monteum Limited concluded that the increase of the wind farm area would only

increase this displacement effect, the concentration of vessels and also gear conflict.

- 3.8.26. The Applicant responded at Deadline 1 [REP1-017] stating that the ES impact assessment had not identified Significant effects (in EIA terms) on fishing fleets, with the exception being the impact of temporary loss of fishing grounds and associated displacement during the construction phase of the Proposed Development for the UK potting fleet, for which a potentially significant (in EIA terms) effect was identified. The Applicant recognised that in some instances the removal or relocation of static gear may be required during the construction phase. However, the Applicant set out that where this is the case, appropriate mitigation would be implemented for affected fishing vessels following an evidence-based approach, in line with FLOWW guidance, via the establishment of co-operation agreements and associated disruption payments, which would reduce the significance of the effect such that it is considered not significant in EIA terms.
- 3.8.27. The Applicant continued to explain [REP1-017] that during the operational phase of the development fishing would be possible within the array area where turbine spacing and turbine layout allow productive grounds to be targeted. The minimum turbine spacing of 830m and the burial of inter-array cables under the seabed (or the use of CP where the burial is not possible) is set out by the Applicant as reasons why commercial fishing could be undertaken within the array areas of the Proposed Development other than in periods of maintenance for example [REP1-017, Table 6-28].
- 3.8.28. Following questions at ISH1 [REP1-033] relating to whether fishing vessels could actively enter into the proposed array areas to fish, the Applicant responded that some fishing vessels transit through the Rampion 1 OWF array and also fish within the array areas. However, this would ultimately be the vessel Captain's decision, according to the Applicant.
- 3.8.29. Following the ISH1 the Applicant submitted the document entitled "Further Information for Action Point 31 – Winter Fishing" [REP1-029]. This document concluded that marine traffic data indicated that fishing vessels displayed lower levels of activity during the Rampion 1 OFW winter period. The Applicant went on to explain that it is expected that this is reflective of the effect of inclement weather during winter and associated vessel skipper perception of risk when deciding whether to operate within the wind farm (Paragraph 1.5.1). The Applicant also explained that this trend is observed not only in the Proposed Development commercial fisheries study area, but also in adjacent ICES rectangles (Paragraph 1.5.2).
- 3.8.30. The Sussex IFCA stated that it supported the Proposed Development functioning as a multi-use site for fishers wishing to fish within the windfarm post construction, but that it would have a significant impact on the local fleet during the construction phase [REP1-053]. The Sussex IFCA also agreed that skippers are likely to operate at a lower level within the windfarm during the winter. This is due, according to the Sussex IFCA, to increased risk of fixed gear moving around during adverse weather conditions and getting caught around the turbines. However, the Sussex IFCA stated that the long-term consequences to commercial fishing within the Proposed Development array areas, during and post construction, would be negative [REP3-134].

Compensation and associated disruption payments

- 3.8.31. As stated by Sussex IFCA, financial compensation to local fishers would go some way towards mitigating the negative consequences from the Proposed Development [REP3-134].
- 3.8.32. In the ExA's WQ [PD-009] the ExA asked the Applicant at Question CF1.1 about the matter of ADR. The Outline FLCP [REP1-013, Section 3.5] states that if mutual agreement cannot be reached on compensation measures, then both parties should seek to undertake Alternative Dispute Resolution (ADR), in line with FLOWW (2015) guidance. ExA questioned whether, based on a scenario where a fishery business wants to activate the ADR process, whether the Applicant could decline to enter into this process, and what would happen in this scenario.
- 3.8.33. The amended FLCP [REP6-222] states that both parties have to agree to refer their dispute to ADR, which would be undertaken by a mutually agreed third party by both sides of the dispute (Paragraph 3.5.6). In response to Question CF1.1 [PD-009] the Applicant stated [REP3-051] that it is committed to seeking to resolve any disputes which may arise with fishers relating to the adherence to, or agreement of cooperation agreements which are in place or being negotiated between fishers and the Applicant. The Applicant further stated that provided that a legitimate dispute had arisen, which was directly related to the terms of a cooperation agreement, the Applicant confirms that it would engage with an ADR process activated by a fisheries stakeholder to assist with resolving matters of disagreement, to seek to avoid more formal dispute resolution procedures.
- 3.8.34. Relevant to this procedure could be the need for compensation due to damaged fishing equipment or gear. The RR submitted by Monteum Limited [RR-251] claimed that backfilling of the cable trenches of Rampion 1 has resulted in numerous "free roaming" boulders which ruin fishing nets. In response to the Monteum Limited RR [RR-251] the Applicant set out that appropriate mitigation would be implemented for affected fishing vessels following an evidence-based approach, in line with FLOWW guidance, via the establishment of co-operation agreements and associated disruption payments [REP1-017, Table 6-28].

Effect of the Proposed Development on commercial fishing and shellfish

- 3.8.35. Monteum Limited in its RR [RR-251] stated that there was concern with the brown crab migration being interrupted by effects produced by inter-ray and export cables of Rampion 1 OWF. Monteum Limited explained that the local industry is finding that the current brown crab population is not behaving as it should be. This crab does not appear to be feeding properly, are very sleepy in behaviour and are not migrating as they should. It was noted by Monteum Limited that in the past couple of years European lobsters and brown crab appear to be dying in static lobster pots. Monteum Limited stated that the local crabbing industry is dying.
- 3.8.36. On another species, Monteum Limited stated that dover soles, another commercially important species, is normally "fat" and full of meat in November but are "skinny" and relatively worthless.
- 3.8.37. Monteum Limited did acknowledge that the changes to local crab and dover sole cannot be automatically attributed to Rampion 1 OWF but said that it should be investigated.

- 3.8.38. Hubbard Fisheries Limited in its RR [RR-149] also had concerns regarding environmental impacts from the Proposed Development, such as damage to fish and shellfish stocks.
- 3.8.39. In response to these RR concerns the Applicant [REP1-017] stated that disturbance of commercially important fish and shellfish resources leading to displacement or disruption of fishing activity is not considered to be significant (in EIA terms) [REP6-121]. Furthermore, the Applicant stated that Rampion 1 construction commenced in February 2016 and completed in April 2018 when the wind farm became operational. *“Landings of brown crab show a peak in 2016 followed by a trend of gradual decline through to 2022. Landings of lobster show a trend of gradual decline from 2014 to 2022. Landings of sole fluctuate across the time series displayed, peaking in 2014 and being at their lowest in 2020. These landings trends are broadly consistent with those associated with adjacent ICES rectangles 30E8 and 30F0. As observed in the Monteum representation, trends in landings of these species do not indicate any clear correlation with the Rampion 1 construction and operational activity”.*
- 3.8.40. The ExA did not consider it necessary to explore the matter further upon receipt of the Applicant’s response, as the ExA was satisfied it had sufficient evidence to make an informed judgement.

French Government issues raised regarding fisheries

- 3.8.41. A letter was received [REP3-104] from the French Government’s Mission for the Coordination of Public Policies on the Sea and the Coast – France’s Secretary of State for the Sea. The letter raised concerns that the pre-application advice was to involve the French Authorities and representatives from French fishing groups and to ensure good cross border cooperation the Applicant should have initiated such consultation. Furthermore, it stated that the Applicant could have also involved the DIRM-MEMN as the relevant state institution responsible for coordinating public policy across the Eastern Channel-North Sea coastline along with SRCAM (Service Réglementation et Contrôle des Activités Maritimes (Maritime Activities Regulation and Control Service)), in its role in monitoring and supervising commercial fishing activities [REP3-104].
- 3.8.42. The Applicant responded by stating that the Applicant did engage with French fisheries stakeholders, including FROM Nord and Basse Normandie. The Applicant explains that the engagement request was responded to only by FROM Nord and the Applicant and their consultants held a meeting with FROM Nord in December 2020. Feedback from FROM Nord was taken and incorporated into the ES assessment, according to the Applicant. The Applicant also stated that the DIRM unit provided their response to the PIER consultation in 2021 [REP4-070].
- 3.8.43. The Applicant also highlighted that the ES Chapter 10 [REP6-121] explicitly considers potential effects of the Proposed Development on French fleets, noting that publicly available fisheries data indicates potential for some French fleet activity within the Order Limit area, but with more actively fished grounds located to the south and east of the study area. The ES assessment recognised the potential for minor impacts on the French fleet, which are not significant EIA terms [REP4-070].

ExA's Findings

- 3.8.44. Firstly, before reaching a decision, NPS EN-3 2011 states that the Secretary of State should be satisfied that disruption to the fishing industry, whether short term during construction or long term over the operational period, including that caused by the future implementation of any safety zones, has been mitigated where reasonably possible (NPS EN-3, Paragraph 2.6.136).
- 3.8.45. NPS EN-3 2011 requires that the Secretary of State should be satisfied that the site selection process, including siting in relation to the location of prime fishing grounds has been undertaken in a way that reasonably minimises adverse effects on fish stocks, including during peak spawning periods and the activity of fishing itself (NPS EN-3, Paragraph 2.6.132); and whether the project would not prevent or significantly impede protection of sustainable commercial fisheries or fishing activities, if the project occupies any recognised important fishing grounds (NPS EN-3, Paragraph 2.6.132).
- 3.8.46. Within NPS EN-3 2024, on the matter of commercial fisheries and fishing, it states that the Secretary of State should consider the extent to which the Proposed Development occupies any recognised important fishing grounds, and whether the project would prevent or significantly impede protection of sustainable commercial fisheries or fishing activities.
- 3.8.47. Furthermore, of particular relevance is the South Inshore and South Offshore Marine Plan (July 2018). This includes policies S-FISH-1 (Proposals that support the diversification of a sustainable fishing industry and/or enhance fishing industry resilience to the effects of climate change should be supported) and S-FISH-2 (Proposals that may have significant adverse impacts on access to, or within, sustainable fishing or aquaculture sites must demonstrate that they will, in order of preference: a) avoid, b) minimise, c) mitigate significant adverse impacts, d) if it is not possible to mitigate the significant adverse impacts, proposals should state the case for proceeding) are of particular relevance.
- 3.8.48. In this case, it is acknowledged that there would be disruption to commercial fishing, especially in the construction phase of the Proposed Development. The commitment to liaising with the local fishing industry would be, in the ExA's view, particularly beneficial in trying to mitigate any adverse impacts to potentially affected fishing fleets, such as the UK Potting fleet in this area. The requirement for a FLCP is secured in the DMLs in Schedule 11 and 12 (DMLs) Condition 11(g), which would accord with the outline FLCP [REP6-222]. The outline FLCP includes the requirement for the appointment of a CFLO and also addresses potential cooperation agreements and associated payments, for example.
- 3.8.49. Commitments set out in the CR [REP6-227], such as C-47 (For the ongoing liaison with fishing fleets will be maintained during pre-construction, construction, maintenance and decommissioning operations via an appointed Fisheries Liaison Officer and Fishing Industry Representative) are also considered as beneficial to mitigate the effects of fishing restrictions throughout the course of the Proposed Development.
- 3.8.50. It would not be possible to avoid restrictions to fishing fleets in certain offshore areas during construction, maintenance works and decommissioning works, as this would be for safety reasons. However, the main periods of fishing restrictions would be during the relatively brief offshore construction and decommissioning periods,

with the outline FCLP providing possible compensation to fishing fleets affected. This is considered by the ExA to be suitable mitigation procedures to address the effects of restrictions of access to fishing grounds for periods of time.

- 3.8.51. Furthermore, for the operational period of the Proposed Development the Applicant has provided evidence that there is fishing taking place in the comparable Rampion 1 OWF array area, though it is acknowledged that it would be up to the captain of each vessel to make their own decision, taking into account the weather at that time also. There is the noted reduction of fishing vessels in the winter months within the Rampion 1 OWF array area in winter, maybe due to weather circumstances, but this was also a trend observed not only in the Proposed Development commercial fisheries study area, but also in adjacent ICES rectangles. This indicates that winter commercial fishing activity may well be less in the winter, whether or not there are wind turbine arrays present.
- 3.8.52. For the reasons given above, the potential disruption to the fishing industry would be sufficiently mitigated by secured means, such as the required final FLCP. The proposal would accord with the NPS EN-3 and also the South Inshore and South Offshore Marine Plan policies (particularly S-FISH-2) on the matter of fishing restrictions and disruption.
- 3.8.53. In terms of compensation and mitigation, the FLCP is considered by ExA to be a critical document to ensure there is recourse for the effected fishing industry to claim some form of compensation, with arbitration part of the procedure if there is no resolution between the parties. The Outline FLCP [REP6-222] has been amended to provide more clarity on these procedures.
- 3.8.54. Overall, the ExA is satisfied with the FLCP at this stage, acknowledging that a final FLCP would need to be submitted to and agreed by the MMO pre-commencement of development, as required by Condition 11(g) of the DMLs within the Recommended DCO [REP6-007]. The proposals would accord with NPS EN-3 and the South Inshore and South Offshore Marine Plan on this matter.
- 3.8.55. It is clear that there have been issues with some of the commercial fish and shellfish stock in recent years. However, there is a lack of evidence to attribute such changes on these species to the Rampion 1 OWF development. Indeed, the Applicant's evidence indicates that fluctuations in landings of brown crab and dover sole have seen a decline in recent years reported, but these figures are stated to be broadly consistent with adjacent sea areas where there are no offshore windfarms which could affect these species.
- 3.8.56. There has been no further response from Monteuem Limited or Hubbard Fisheries to dispute the claims made by the Applicant. The ExA is satisfied that the Proposed Development would minimise the effects on the fish species mentioned by Monteuem Limited, in accordance with NPS EN-3 2011.
- 3.8.57. In regard to the comments from the French Government, from the Applicant's response [REP4-070] and the ES [REP6-121] the ExA is satisfied that the Applicant had engaged sufficiently with the French Authorities relevant to commercial fisheries and taken into account the potential effects on the French fishing fleet.
- 3.8.58. The ExA also notes that the Applicant responded in full to the French Government concerns, with no further comment from the French Government or any of the relevant departments to commercial fisheries.

Conclusions

- 3.8.59. The ExA concurs with ES Chapter 10 Commercial Fisheries [REP6-121] that the significance of residual effect from the Proposed Development on these matters would be no greater than Negligible to Minor Adverse (Not Significant) from any phase of development.
- 3.8.60. The ExA is satisfied that the Applicant has demonstrated that the impacts associated with the Proposed Development can be satisfactorily mitigated and managed through the commitments identified in the Commitment Register [REP6-227], which are secured by the relevant Requirements and Conditions in the Recommended DCO/DML.
- 3.8.61. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant, NPS EN-5 2011 and with other national and local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.8.62. The ExA attaches a Little Negative weight to this effect related to commercial fisheries matters in the planning balance against the making of the Order being accordingly attached.
- 3.8.63. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to commercial fisheries and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.9. SHIPPING AND NAVIGATION

The Applicant's Case

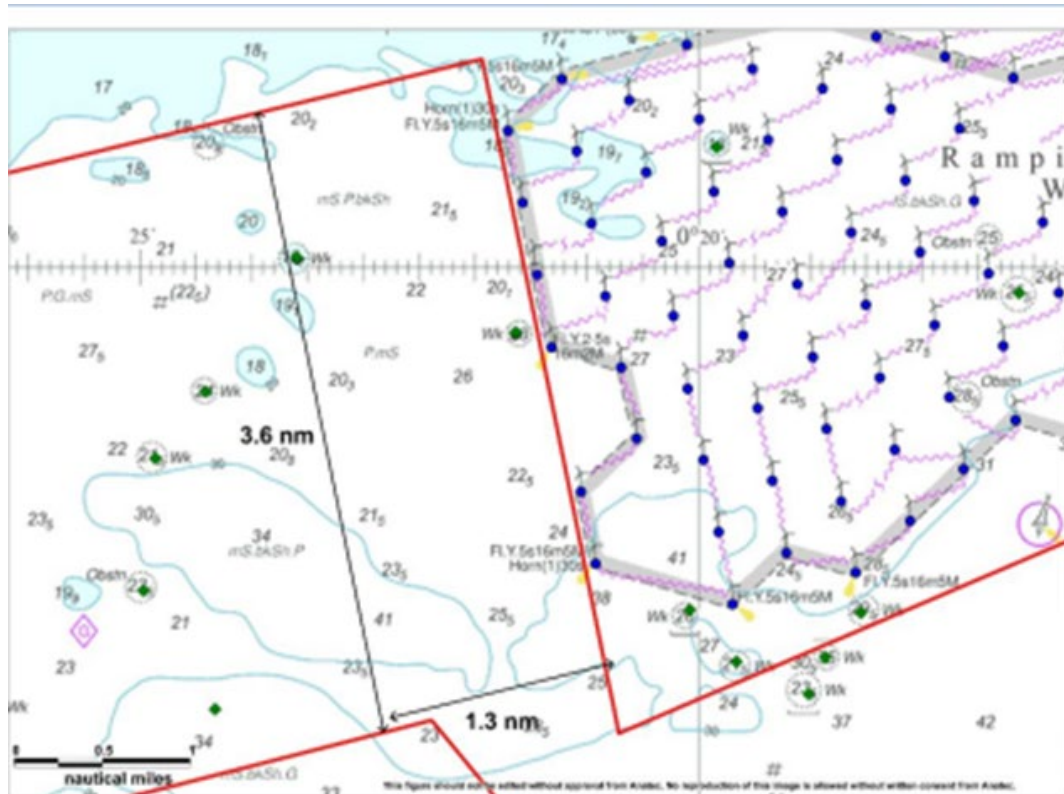
- 3.9.1. It is Chapter 13 [APP-054], amended at Deadline 6 [REP6-127] which concerns the assessment of the Proposed Development on shipping and navigation matters, together with the associated figures for this chapter [APP-086]. A Navigational Risk Assessment (NRA) [APP-155] was also submitted.
- 3.9.2. Chapter 13 sets out the approach used for baseline data collection, which is set out in Section 13.5. This explains that there was a desk study to inform the assessment on shipping and navigation, with the data sources included in Table 13-9 of Chapter 13 [REP6-127]. This includes the collection of data regarding maritime incidents and licenced aggregate dredging areas.
- 3.9.3. Site surveys for vessel traffic were also conducted, all lasting 14 days, with a summer and winter survey in 2020, and then the same in 2022, as explained in the ES [REP6-127], Table 13-10.
- 3.9.4. Section 13.4 of Chapter 13 also includes the scope of the assessment. The study area of the shipping and navigation assessment is defined as a minimum 10 nautical mile (nm) buffer of the Order limits (cropped to the UK coastline). The temporal scope of the assessment used was the entire lifetime of the Proposed Development, including construction and decommissioning phases.
- 3.9.5. The assessment of baseline data identified navigational features, such as other existing windfarms (Rampion 1), the Dover Straits Traffic Separation Scheme

(TSS), the Inshore Traffic Zone, aggregate dredging areas, port locations, and Military Practice and Exercise Areas (PEXA), among others. The Applicant has set this out in full in table 13-11 of ES Chapter 13 [REP6-127].

- 3.9.6. The baseline surveys also identified 17 main commercial shipping routes within the study area. All were stated to have 10 or less daily vessel movements except for Route 1, which is the westbound lane of Dover Strait TSS to westbound lane of Casquets TSS (to the west of the proposed western array area), which has a daily average number of vessels of 74 on this route [REP6-127, Table 13-12]. However, only five of the 17 routes would require a deviation due to the Proposed Development, with Route 3 (5 average vessels per day) the busiest of these routes (Table 13-17).
- 3.9.7. The ES includes in Table 13-7 [REP6-127] the potential receptors, which includes commercial, fishing, military, and recreational vessels. UK emergency responders are also included.
- 3.9.8. From the data collated the ES identifies the potential worst-case effects on shipping and navigational receptors [REP6-127, Table 13-8], through all phases of the development, from construction to decommissioning. These include, for example, the following:
- Creation of vessel-to-vessel collision risk (including between a project vessel and a third-party vessel).
 - The displacement of vessels.
 - Reduced access to ports.
 - Creation of a vessel to structure allision risk.
 - Changes to under keel clearance.
 - Increased anchor and sub-sea cable interaction.
 - A reduction in emergency response provision, including Search and Rescue (SAR) capability.
- 3.9.9. The methodology of the ES assessment is set out in section 13.8 of Chapter 13 [REP6-127]. The significance of the effects is determined via an impact ranking matrix, which assesses frequency and consequence of the impacts. This has been determined by using several inputs, such as the vessel traffic surveys and level of stakeholder concerns raised, for example. Impacts are categorised based on the impact ranking matrix set out in Table 13-15 of this chapter.
- 3.9.10. The MCA stated [PEPD-056] that the Applicant had undertaken a detailed Navigation Risk Assessment (NRA) in accordance with MCA guidance MGN (Marine Guidance Note) 654 and NRA risk assessment methodology. Furthermore, the MCA were satisfied that appropriate traffic data has been collected in accordance with MGN 654, including the two 14-day marine vessel traffic surveys carried out in 2020. Matters of vessel traffic surveys, baseline environment, assessment methodology and worst-case assessments were all agreed between the Applicant and the MCA in their SoCG [REP5-101].
- 3.9.11. The ES sets out the receptor and the consequence of the impact for each phase of the Proposed Development. This is summarised in Table 13-28 of the ES [REP6-127]. The consequence of the impact on shipping and navigation is assessed by the ES as no greater than moderate for any individual impact at any phase of the Proposed Development.

- 3.9.12. The embedded environmental measures which are contained within the ES Chapter [REP6-127], Table 13-14, and the NRA [APP-155] include, for example, the use of Safety Zones around offshore works; the monitoring of vessel traffic; the use of navigational aids such as lights and markings on offshore infrastructure; and the commitment to agree a final layout plan with the MMO, in consultation with Trinity House and the MCA. Additionally, there would be a Structures Exclusion Zone (SEZ) west of Rampion 1 OWF which could also serve as a potential navigational corridor from North to South and vice versa, which the ES explains would reduce the necessary deviation of some routes such as from Littlehampton to the Dover Strait TSS [REP6-127], Paragraph 13.1.15.

Figure 12 – 1.3nm x 3.6nm Structure Exclusion Zone [APP-155]



- 3.9.13. These mitigation methods are set out in a series of commitments set out in the Commitment Register [REP6-227], such as:
- C-84 - The commitment to exhibit lights, marks, sounds, signals and other aids to navigation as required by Trinity House and the MCA
 - C-86 - The commitment to submit a final layout plan to MMO following consultation with Trinity House and the MCA
 - C-87 - Requiring the MMO in consultation with the MCA to confirm that the undertaker has taken account of all MCA recommendations contained within Maritime Guidance Note (MGN) 654 “Offshore Renewable Energy Installations - safety response”
 - C-304 - For the Windfarm Exclusion Zone to be open to navigation for all vessels
- 3.9.14. The Applicant has provided Table 13-14 in the ES [REP6-227] with a full list of embedded environmental measures.

- 3.9.15. Mitigation is proposed to be secured through a number of plans and documents which are included in the DML at Schedules 11 and 12 of the Recommended DCO.
- 3.9.16. Conditions 11(o) of Schedules 11 and 12 specifically requires an Aids to Navigational Plan to be submitted to the MMO, to include details of how the undertaker would comply with the provisions of Condition 6 (Aids to Navigation) from the commencement of construction of the authorised scheme to the completion of decommissioning.
- 3.9.17. With these environmental measures taken into consideration to mitigate shipping and navigational impacts, the ES assessment of residual effects (significance) is either 'Tolerable' or 'Broadly Acceptable' for all assessed impacts [APP-155], Table 13-28. The Applicant explains: "*Effects determined to be of Broadly Acceptable significance are low risk and not significant in EIA terms. Effects determined to be of Tolerable significance are intermediate risk and not significant in EIA terms.*" [APP-052, Paragraph 13.1.6]. As such, the ES concludes there would be no effect on shipping and navigation which would be considered significant in EIA terms.
- 3.9.18. Issues relating to fishing vessel impacts from the Proposed Development, are addressed in Section 3.8 of this Recommendation.

Examination Issues

- 3.9.19. The main issues in the Examination which related to shipping and navigation were:
- Navigational Safety.
 - Access to Ports/Diversion of routes.

Navigational safety

- 3.9.20. At Pre-Examination stage, the MCA submitted a detailed response to the application Shipping and Navigation information [PEPD-056]. This included consideration of the submitted NRA [APP-155]. MCA summarised that it was content with the Formal Safety Assessment process the Applicant has taken in assessing risks.
- 3.9.21. MCA noted that the engagement with stakeholders regarding issues at the Scoping and PEIR stages proved effective in refining the Order limits and final areas of construction for the Proposed Development. The changes to the Order limits with the submitted application from that initially proposed at Pre-Application reduced the significance of effects of the Proposed Development on a range of shipping issues, including the interaction with traffic exiting the Dover Strait TSS. The early changes to the Order limits for the application have led to an increase in navigable sea room in the vicinity of The Dover Strait TSS to the south, ITZ to the east and the approaches to the Solent to the west [PEPD-056, Section 1].
- 3.9.22. With regard to the use of the SEZ as a navigation corridor this was welcomed by the MCA. MCA also agreed that the minimum width required for the 3.6nm long corridor was 1.3nm as a worst-case scenario, which is compliant with MGN 654 [PEPD-056, Section 1].
- 3.9.23. Additionally, on other safety related matters, MCA stated [PEPD-056] that all lighting and marking arrangements would need to be agreed with MCA and Trinity House. Safety zones during the construction, maintenance and decommissioning phases were supported by MCA, but would consider further when a separate application for the Safety Zones were submitted in the future.

- 3.9.24. In relation to SAR implications, the MCA stated [PEPD-056] that there is an expectation that the presence of wind farms would increase the likelihood of the requirement for emergency response, not just from navigational incidents but from other incidents such as medical evacuation or pollution. MCA explained that a SAR checklist based on the requirements in MGN 654 Annex 5 would need to be completed in agreement with MCA before construction starts. This would include the requirement for an approved Emergency Response Co-operation Plan (ERCoP) [PEPD-056].
- 3.9.25. In terms of layout, MCA stated [PEPD-056] that the turbine layout design must be compliant with MGN 654 and it would require MCA and Trinity House approval prior to construction to minimise the risks to surface vessels. MCA would seek to ensure all structures are aligned in straight rows and columns with a minimum of two lines of orientation.
- 3.9.26. MCA agreed with the NRA and ES that the Proposed Development would not pose an unacceptable navigational risk [PEPD-056, Section 1]. Furthermore, in ISH 1 – Session 8 [EV3-016 – Video Recording] [EV3-017 – Transcript] the MCA raised no concerns with regard to the potential layout or the Structural Exclusion Corridor in terms of navigational risk.
- 3.9.27. The Applicant noted the MCA comments on navigational safety matters [REP2-026]. It highlighted that compliance with MGN 654 would be secured through condition 14 of each of the DMLs at Schedules 11 (Generation Assets) and 12 (Transmission Assets) of the draft DCO [REP6-007].
- 3.9.28. On the matters related to navigational safety within the signed SoCG [REP5-101] the MCA and the Applicant were in agreement, with the MCA stating that it is content and agrees with the assessment and conclusion that it would not pose an unacceptable navigational risk (Ref: MCA6). All related navigational safety points were also agreed in the signed SOCGs between the Applicant and Trinity House [REP5-102] and the UK Chamber of Shipping [REP6-242].

Access to ports and diversion of routes to ports

- 3.9.29. Within the ES [REP6-127], Table 13-12 sets out the 17 main routes currently running through or near to the Proposed Development Order limits, along with the average vessels per day on each route. The ES stated that based on existing offshore windfarms, commercial vessels would not choose to navigate within an array area. Therefore, some deviation would likely be required.
- 3.9.30. For what would be the busiest affected route (Route 3 - westbound lane of the Dover Strait TSS to ports in the Solent) the anticipated deviation would be small at 0.2 nautical miles (nm). The greatest deviation necessary would be for Route 17 (Littlehampton Harbour to the Dover Strait TSS) which would be 12.5nm. However, Table 13-12 states that vessel frequency would be only monthly, therefore very infrequent compared to the other routes. Furthermore, there would also be the MGN 654 compliant navigation corridor (Structures Exclusion Zone) which would allow more direct routes to or from these Sussex ports and harbours towards the Dover Strait TSS [REP6-127].
- 3.9.31. The MCA [REP5-101] Trinity House [REP5-102] and the UK Chamber of Shipping [REP6-242] all agreed in the SoCGs that based on the information provided within Chapter 13: Shipping and Navigation [REP6-127] and Appendix 13.1 NRA [APP-

155] that in isolation hazards (impacts) including main route deviations caused by the Proposed Development are broadly acceptable or tolerable (unlikely to be significant) with the mitigation measures and required monitoring in place.

- 3.9.32. The ExA sought clarification on the process and timing for obtaining a Pilot Exemption Certificate (PEC) when operating within Littlehampton Harbour's Competent Harbour Authority (CHA) waters.
- 3.9.33. The Littlehampton Harbour Board [REP2-060] provided more information, stating that the area of jurisdiction includes both the Statutory Harbour Area (SHA) and the CHA Pilotage Area. Pilotage is compulsory within Littlehampton Harbour's CHA for most larger vessels. Certain operations may still be subject to Pilotage even if they do not involve Harbour entry. This could include vessels operated by the Applicant at nearby Climping Beach landfall area. However, a PEC can be granted by Littlehampton Harbour CHA and that qualifying for a PEC is never more onerous than qualifying for an authorisation as a pilot. Certificate holders must then comply strictly with all port requirements and would be under the direction of the Harbour Master when navigating within port limits.
- 3.9.34. The Applicant confirmed that a PEC is a standard function of any port that is operating commercial shipping in and out of it, but it is not an essential requirement as the vessels could still take pilots offered by the port themselves [REP1-033, Ref: 14(ii)]. The Applicant stated that it would likely look into obtaining a PEC for its vessels if they were going to be within the area frequently, particularly given the ports proximity to Climping Beach. However, it was noted that if there was a vessel which was not going into Littlehampton Harbour, but came within close enough proximity, that the pilot would have to be involved or a PEC would need to be in place.

ExA's Findings

- 3.9.35. NPS EN-3 2011 states that the Secretary of State should be satisfied that the Proposed Development should not pose unacceptable risks to navigational safety after all possible mitigation measures have been considered (Paragraph 2.6.165).
- 3.9.36. Furthermore, NPS EN-3 2011 states that "*site selection should be made with a view to avoiding or minimising disruption or economic loss to the shipping and navigation industries, with particular regard to approaches to ports and to strategic routes essential to regional, national and international trade, lifeline ferries and recreational users of the sea* (Paragraph 2.6.162)".
- 3.9.37. At the end of the Examination period there was positive agreement between all parties that the Proposed Development would not result in an unacceptable navigational safety hazard. With the aforementioned commitments and conditions within both DMLs, requiring for example compliance with MGN 654 (Condition 14), appropriate lighting and marking (Condition 6) and for the MMO in consultation with Trinity House and the MCA to agree the final layout (Condition 11), the ExA are satisfied that an acceptable level of navigational safety would be secured.
- 3.9.38. Considering the lack of any significant objection from the relevant statutory bodies or IPs on matters of navigational safety and how the mitigation has been secured appropriately the ExA concludes the Proposed Development is acceptable on this matter. The ExA accepts the robustness of the evidence contained within the ES

[REP6-127] that on the matter of Navigational Safety the residual effect would be either tolerable or broadly acceptable, depending on the phase of development.

- 3.9.39. As required by NPS EN-3 2011, the Proposed Development would not pose an unacceptable risk to navigational safety after all possible mitigation measures have been considered (Paragraph 2.6.165). The Proposed Development accords with the NPS on matters of Navigational Safety.
- 3.9.40. On the matter of port access, the ExA finds that the location of the array areas are such that they would not have a significant impact on port access. It is recognised that there may be some increased transit distances along some routes, but these are mostly minor changes. The aforementioned Route 17 would have the longest necessary deviation, but this is not a route with frequent shipping. Furthermore, the availability of the route between Rampion 1 and the Proposed Development array areas, known as the SEZ, would allow for a more direct route north-south through the arrays.
- 3.9.41. With regard to Littlehampton Harbour, the ExA is satisfied that the Applicant and Harbour Authority understands what is necessary for pilotage, including for vessels near Climping Beach. This could mean a PEC for the Applicant, but this is not essential to allow for compliance with this harbour's pilotage regulations.
- 3.9.42. The ExA accepts the conclusions in the ES [REP6-127] that effects on the matters of port access and the displacement of shipping on routes to and from ports would not be significant. Effects determined to be of Tolerable significance are not significant in EIA terms. Access to and from regional ports and harbours would therefore not be detrimentally affected by the Proposed Development. Additional transit times to and from these ports and harbours would be minimal. As such, disruption and economic loss for shipping and ports/harbours would be minimal, in accordance with NPS EN-3 2011, particularly the policy at Paragraph 2.6.162.
- 3.9.43. On another matter, the MCA [REP5-145] did require some changes to a Requirement and a Condition within the draft DCO. With regard to Condition 9(8) of the DMLs (Schedule 11 and 12) the MCA [REP5-145] stated it needed to know immediately if any dropped object is a navigation hazard within 6 hours. However, the draft DCO [REP6-007] states that this should be as soon as reasonably practicable and in any event within 24 hours following the undertaker becoming aware of an incident. ExA acknowledges that 24 hours is much longer than 6 hours, but the Condition says that the reporting should be when reasonably practicable, which could be very soon after the incident occurred, potentially much less than 6 hours. As such, the Condition as proposed by the Applicant is as included in the Recommended DCO.
- 3.9.44. The other Condition referred to by the MCA [REP5-145] was Condition 16(2) of the DMLs, which relates to pre-construction monitoring and surveys. It sets out that "*the pre-construction survey proposals must have due regard to the need to undertake a full sea floor coverage swath-bathymetry survey*". The MCA stated that this wording does not secure the requirement to conduct surveys. However, the Applicant's response [REP6-264] is that the wording includes "the need" to undertake the specific surveys. ExA are satisfied that the wording, with the reference to the need to undertake surveys, is sufficiently secure and is included in the Recommended DCO.

Conclusions

- 3.9.45. The ExA concurs with ES Chapter 13 Shipping and Navigation [REP6-127] that the significance of residual effect from the Proposed Development on these matters would be no greater than Broadly Acceptable to Tolerable from any phase of development.
- 3.9.46. The ExA is satisfied that the Applicant has demonstrated that the impacts associated with the Proposed Development can be satisfactorily mitigated and managed through the commitments identified in the Commitment Register [REP6-227], which are secured by the relevant Requirements and Conditions in the Recommended DCO/DML.
- 3.9.47. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and NPS EN-5 2011 and with other national and local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.9.48. The ExA attaches a Little Negative weight to this effect related to shipping and navigation matters in the planning balance against the making of the Order being accordingly attached.
- 3.9.49. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to shipping and navigation and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.10. AVIATION

The Applicant's Case

- 3.10.1. Chapter 14 (Civil and Military Aviation) (Originally submitted [APP-055], superseded at Deadline 6 [REP6-129]) concerns the assessment of the Proposed Development on aviation, both civilian and military. ES Chapter 14 was accompanied by a set of figures [APP-087]. An Assessment of Aviation and Navigation Night-Time Lighting was also provided [APP-161].
- 3.10.2. Section 14.5 [REP6-129] sets out the baseline data collection undertaken for both civil and military aviation. This baseline data was mainly achieved by reviewing sources from the CAA, the MoD and also the Raytheon Equipment Brochure. This covered the Proposed Development study area and also the Pease Pottage radar facility in Sussex. The Applicant stated that there were no data limitations relating to civil and military aviation that affect the robustness of the assessment of the ES (Paragraph 14.5.3).
- 3.10.3. The spatial scope is defined in Section 14.5 of the ES [REP6-129] as an area of 315km² to the south-east and west of the existing Rampion 1 OWF, between 13km and 25km from the coastline, together with the Zones of Influence (ZOIs) that have formed the basis of the Study Area.
- 3.10.4. Civilian Airline Publication (CAP) 764 (CAA) was used by the Applicant for setting the spatial scope and study area. CAP 764 states the distances from various types of aerodromes where consultation should take place [REP6-129, Paragraph 14.4.4]. MoD facilities and bases, radar system facilities, and SAR operations have also

been considered. The temporal scope for the assessment of civil and military aviation is the entire lifetime of the Proposed Development, which covers the construction, operation and maintenance, and decommissioning phases [REP6-129, Paragraph 14.4.10].

- 3.10.5. Potential receptors have been listed in Table 14-5 of the ES [REP6-129] which includes Gatwick Airport, Shoreham Airport, MoD Portsmouth Danger Areas, and the Pease Pottage Radar facility.
- 3.10.6. The ES [REP6-129] describes the baseline conditions for civil and military aviation (Section 14.6). For civil aviation this explains that the Proposed Development would be within the London Flight Information Region for Air Traffic Control (ATC), with the airspace regulated by the UK CAA. The Proposed Development would also be located within uncontrolled Class G airspace with controlled, predominantly Class A airspace above that. The Class A airspace above Proposed Development is designated as part of the Worthing Control Area and the London Terminal Control Area, with minimum base altitudes of between 5,500 feet (ft) and 8,500ft.
- 3.10.7. Flight in Class G airspace is generally visual, meaning that pilots fly and navigate with reference to the natural horizon and terrain features they see outside. Pilots are required to maintain minimum distances from notified obstacles, including WTGs, and may only fly within the minimum weather and visibility criteria [REP6-129, Paragraph 14.6.1].
- 3.10.8. Furthermore, the ES states that the closest radar is based at Pease Pottage which is approximately 43km north of the Proposed Development Order area. Also, the ES identifies that the nearest aerodrome is Shoreham Airport, which is a small non-radar equipped licensed aerodrome with a runway of less than 1,100m, located approximately 17km to the north of the Proposed Development Order Area.
- 3.10.9. For military aviation, the nearest military airfield with ATC radar facilities is RAF Odiham, over 66km from the Proposed Development Order Area. However, immediately to the west of the Proposed Development Order Area is the Portsmouth Danger Area. These Danger Areas are activated by Notices to Airmen (NOTAMs). These danger areas are mainly utilised for ships operating out of Portsmouth and are used for radar calibration and tracking, helicopter training and gunnery against airborne towed targets.
- 3.10.10. Other offshore windfarms have been identified, including Rampion 1 adjacent to the Proposed Development site.
- 3.10.11. The Applicant states in the ES [REP6-129] that there is no expected change to airspace or airspace users which would affect the future baseline. Also, there are no schemes proposed that the Applicant considers would affect the future baseline.
- 3.10.12. Potential effects identified within the ES [REP6-129] are listed in Table 14-6, for all phases of development. This includes the creation of an aviation obstacle (such as the WTGs), increased chance of mid-air collision due to increased air traffic, the effect of WTGs on Shoreham Airport Instrument Flight Procedures (IFPs), and the effect of the WTGs on radar systems.
- 3.10.13. MDS are set out in section 14.7 of the ES [REP6-129]. They differ depending on the potential effect but given the nature of aviation potential impacts then the maximum

number of tallest WTGs is often the MDS. Table 14-9 identifies the full list of MDSs for each phase of development and for each potential effect.

- 3.10.14. In terms of methodology the ES has used the current baseline and has set out details in Section 14.8. The Applicant has undertaken a computer modelling process to determine the probable likelihood of detection of WTG blades to radar.
- 3.10.15. The impact assessment methodology has been set out by the Applicant (paragraph 14.8.11), which describes the aviation industry as being highly regulated and subject to numerous mandatory standards, checks and safety requirements. The Applicant explained that in all cases, the sensitivity or magnitude of the impact on operations can only be identified by the appropriate aviation organisation conforming to the Risk Classification Scheme used to quantify and qualify the severity and likelihood of a hazard occurring. The Applicant explains that the Risk Classification Scheme is a fundamental element of an aviation organisation's Safety Management System (SMS), which must be acceptable to, and approved by, the UK CAA or the Military Aviation Authority (MAA), as appropriate. On this basis the Applicant, for the purposes of its assessment, have provided no detailed grading of the magnitude of the impact or sensitivity of the receptor on the basis that any potential reduction in aviation safety cannot be tolerated. Instead, the Applicant has used definitions of significance as set out in Table 14-11 [REP6-129], and shown on Figure 13 below:

Figure 13 – Definitions of Significance [REP6-129]

Potential significance	Definition
Major Significant	Receptor unable to continue safe operations or safe provision of air navigation services (radar) or effective air defence surveillance in the presence of the WTGs. Technical or operational mitigation of the impact is required.
Moderate Significant	Receptor able to continue safe operations but with some restrictions or non-standard mitigation measures in place.
Not Significant	The Proposed Development will have little impact on the aviation stakeholder, or the level of impact will be acceptable to the aviation stakeholder.
No Change	The Proposed Development will have no impact on the aviation stakeholder and will be acceptable to the aviation stakeholder.

- 3.10.16. It is noted that there has been no objection from NATS in its RR or SoCG with the Applicant [REP6-251] relating to the Applicant's methodology for assessment or its conclusions. There were no points of disagreement either from Shoreham Airport on the ES methodology or conclusions within its SoCG with the Applicant [REP5-099].
- 3.10.17. The Applicant has included embedded mitigation measures [REP6-129]. This includes providing information and notification for the CAA Aeronautical Information Service and for the updating of aeronautical maps. The WTGs would include marking and lighting in accordance with UK requirements. There is the commitment from the Applicant to submit an ERCOP in cooperation with the MCA to address SAR issues.

- 3.10.18. These commitments are set within the Commitments Register [REP6-227], including references C-108, C109 and C-110. Also, the following Requirements of the draft DCO are of particular relevance in securing aviation mitigation measures:
- Requirement 38 – Primary Surveillance Radar Mitigation
 - Requirement 39 – IFP
- 3.10.19. Within the DML within the Recommended DCO, the following conditions are of particular relevance:
- Condition 8 (Aviation Safety)
 - Condition 14 (Offshore Safety Management)
- 3.10.20. Following the assessments within this ES Chapter [REP6-129], Table 14-12 summarises both the magnitude of impact and the assessment of residual effect, accounting for embedded mitigation. For most impacts, including all for the construction and decommissioning phases the magnitude of effect and residual effects are no more than ‘Not Significant’. However, the two impacts that are different are both in the operational phase. These impacts are the “physical presence of WTGs leading to impacts on published IFPs” and also “WTGs causing permanent interference on civil and military radars”. The impact for both would be ‘Major Significant’, but with mitigation the residual effect would be “Not Significant”.
- 3.10.21. For the IFP issue, this relates to Shoreham Airport. Depending on the height of the turbines it could be that the IFPs would need to be amended. The IFPs for this airport as currently published means that aircraft flying the Shoreham IFPs would not have the required minimum obstacle clearance of 1,000ft above the WTGs if they have a maximum tip height of 325m. As such, the potential impact on safe operations at Shoreham Airport is considered to be major significant. The Applicant stated that an assessment and revision of the IFPs to re-establish the required obstacle clearance would be undertaken (REP6-129, Paragraph 14.10.14).
- 3.10.22. For the radar issue, the ES sets out that the proposed WTGs would only affect the NATS En-Route PLC (NERL) Primary Surveillance Radar (PSR) at Pease Pottage in Sussex. The concern is expressed by the Applicant as being the following:
- “When operational (in other words, with blades fitted and rotating), WTGs have the potential to generate ‘clutter’ (or false targets) upon radar displays, as current generation PSRs are unable to differentiate between the moving blades of WTGs and aircraft. As a consequence, radar operators can be unable to distinguish between primary radar returns generated by WTGs or by aircraft.”* [REP6-129, Paragraph 14.10.18]
- 3.10.23. The Applicant therefore intends to work with the NATS to establish a radar technical solution at source.
- 3.10.24. Military low flying operations and all other defence aviation matters are concluded to be “Not Significant” in residual effect. In the ES [REP6-129] it stated that the MoD have confirmed that the Proposed Development would have no impact on military ATC or Air Defence radars. However, the MoD note that the western boundary overlaps Danger Area D037. The Applicant also points out that the boundary has since been revised and no longer overlaps Danger Area D037.
- 3.10.25. In terms of transboundary aviation effects, the ES [REP6-129] concludes that no significant transboundary impacts are predicted, as any predicted effects upon civil

or military aviation receptors are likely to be limited in extent, being related primarily to the Pease Pottage radar. Also, the screening exercise has identified that, due to the localised nature of the potential impacts, significant transboundary effects on civil and military aviation are unlikely to occur.

- 3.10.26. The Applicant also concludes within the ES that there were no anticipated Proposed Development phase inter-related effects in relation to civil and military aviation. However, the ES did identify that aviation and maritime warning lights could be confusing. On this matter the Applicant stated that work has been undertaken to develop an aviation warning lighting standard where, from the nature of the lighting, it would be apparent to mariners that the aviation lighting is clearly distinguishable from maritime lighting (see Section 14.4 [REP6-129] and Chapter 30 [REP6-165] of the ES).

Examination Issues

- 3.10.27. The main issues in the Examination were:

- Effects of WTGs on radar systems.
- Effect of WTGs on published IFPs.
- Military/Defence aviation effects.

Effects on WTGs on radar systems

- 3.10.28. Within NATS' RR [RR-264] it raised a concern relating to the effect to its radar at Pease Pottage. NATS noted that it is in liaison with the Applicant and hopes to be able to find a mutually acceptable mitigation.
- 3.10.29. During the Examination the ExA asked for an update of progress and negotiations between the Applicant and NATS towards an agreed radar technical solution [PD-009, AV 1.3] [PD-012, AV 2.1]. Whilst there was not a response directly from NATS, the Applicant responded with information on meetings with NATS with progress being made with the proposed mitigation [REP3-051]. The Applicant also stated that it was finalising an agreement with NATS and there were no material open issues between the parties [REP5-119].
- 3.10.30. Following a request by the ExA in ISH 2 (ISH2) [EV3-001] the Applicant included a Requirement (No 38) in the draft DCO [REP6-007] for a radar mitigation scheme to be agreed in writing by the Secretary of State prior to any WTG being erected.
- 3.10.31. At the end of the Examination, with the signed SoCG [REP6-251] NATS confirmed that it had raised an objection due to the impact to Pease Pottage radar. NATS stated that it is working with the developer and hope to be able to find a mutually acceptable mitigation. The Applicant in the SoCG set out that it is looking to enter a commercial agreement with NATS to implement the radar mitigation. On current progress, the SoCG stated that the Applicant and NATS are finalising the agreement. Also, the SoCG reiterated that there are no material open issues between the parties on the form of the agreement or on the wording of the Requirement 38 of the Draft DCO. The SoCG issue of radar effects was stated to be 'agreed' at its current status.

Effect of WTGs on published IFPs

- 3.10.32. For the IFP issue, this relates only to Shoreham Airport, which is less than 20km to the north. The position of the turbine array would potentially affect the airports IFPs.

This is depending on the height of the WTGs. It is understood that the IFPs for this airport as currently published means that aircraft flying the Shoreham IFPs would not have the required minimum obstacle clearance of 1,000ft above the WTGs if they have a maximum tip height of 325m. The IFPs may therefore have to be amended to account for the WTG beneath for Shoreham Airport [REP6-129, Paragraph 14.10.14].

- 3.10.33. Shoreham Airport did not participate in the Examination. The ExA asked questions [PD-009, Reference AV 1.2] [PD-012, Reference AV 2.3] relating to progress of negotiations between the Applicant and Shoreham Airport, to which the Applicant responded by confirming it has been in recent contact with the Brighton City Airport (Shoreham Airport) Operations Director to progress the commercial agreement to amend the IFPs [REP3-051]. Furthermore, later in the Examination the Applicant stated that it had reached an agreement with Brighton City/Shoreham Airport that the IFPs for the airport would not be updated until the post consent stage of the Proposed Development. This is because, depending on the final turbine design, it may not be necessary for the IFPs to be updated [REP5-119].
- 3.10.34. Towards the close of Examination, a signed SoCG between the Applicant and Shoreham Airport was submitted at Deadline 5 [REP5-099]. The Airport's position was that there was a preference for the Applicant to begin discussions co-jointly with the airport as soon as possible, to ensure that the updates to the IFP for the airport can be approved with the CAA and implemented in advance of the construction of the Proposed Development. The Applicant stated that it had completed an initial assessment of the updates required for the IFPs and was undertaking further work to determine how updates could be approved and implemented in a timescale which is advantageous to both the Airport and the Applicant.
- 3.10.35. Also noted within the SoCG is reference to Requirement 39 of the Recommended DCO, which required that the Applicant must provide details of the offshore development to the Airport Operator and Secretary of State before commencement of offshore development. Then, the Undertaker of the Development must inform the Secretary of State whether the height and/or position of the final design WTGs would have an impact on the Airport IFPs. If amendments are required, then the Developer cannot erect any WTG that would affect the airport IFPs until the amended IFP scheme has been approved by the Airport Operator and that the CAA has evidenced its approval also. In the SoCG, Shoreham Airport is stated to have agreed to the wording of this Requirement.

Military/Defence Aviation Effects

- 3.10.36. There was no submission or response from the MoD regarding the effect of the Proposed Development on military aviation. However, the ES [REP6-129] notes that with the pre-application submission the MoD confirmed that the Proposed Development would have no impact on military ATC or Air Defence radars. However, the MoD noted that the western boundary of the array overlaps Danger Area D037 (part of the Portsmouth Danger Area). The ES stated that the boundary has since been revised and no longer overlaps Danger Area D037.

ExA's Findings

- 3.10.37. As stated by NPS EN-1 2011, it is required that the development would not have an impact on the safe and efficient provision of en-route ATC services for civil aviation,

in particular through an adverse effect on the infrastructure required to support communications, navigation or surveillance systems [NPS EN-1, Paragraph 5.4.17]. NPS EN-1 2024 echoes this, stating that it should be considered whether the development would have a negative impact on the safe and efficient provision of en-route ATC services for civil aviation (Paragraph 5.5.59).

- 3.10.38. NPS EN-1 2011 requires that the safety of UK aerodromes, aircraft and airspace is not adversely affected by new energy infrastructure [NPS EN-1, Paragraph 5.4.2]. This is also reflected with the 2024 published NPS EN-1, at paragraph 5.5.59.
- 3.10.39. NPS EN-1 2011 also requires that the development would not significantly impede or compromise the safe and effective use of defence assets or significantly limit military training [NPS EN-1, Paragraph 5.4.17]. This requirement for energy development is also reflected within the 2024 published NPS EN-1 (Paragraph 5.5.59).
- 3.10.40. As set out in NPS EN-1 2024, the Secretary of State should be satisfied that the proposal has been designed, where possible, to minimise adverse impacts on the operation and safety of aerodromes and that realistically achievable mitigation is carried out on existing surveillance systems such as radar/tracking technologies (5.5.50).
- 3.10.41. On the matter of radar effects, the ExA notes that the NATS holding objection was still in place at the end of Examination. However, the ExA is satisfied that from the SoCG there has been positive progress on achieving a mutually agreed mitigation for radar impacts. It is apparent that a commercial agreement is necessary and outstanding, but that there are no material open issues between the two parties. Furthermore, there is an agreement on the wording of Requirement 38 in the Recommended DCO. The ExA is therefore confident that the parties can reach full agreement and that it is likely that, on this basis, NATS' objection will be withdrawn before the application has been decided.
- 3.10.42. The ExA is reassured by the provision secured by Requirement 38 of the Recommended DCO, that limits the Applicant's ability to build/erect the turbines until a primary radar mitigation scheme is agreed, implemented and operated in accordance with the approved scheme. As such, even if there is no final agreement between the Applicant and NATS before any consent given, the Requirement would necessitate an agreed radar mitigation scheme before any WTG could be erected.
- 3.10.43. Due to the continued progress towards NATS removing its objection to the Proposed Development the Secretary of State may wish to seek further information from NATS as to the situation at that time and whether the objection can be removed. However, even if the NATS objection is removed it is considered prudent by the ExA to retain Requirement 38 as drafted to allow control and secure a mitigation scheme is submitted prior to development of the WTGs.
- 3.10.44. The ExA finds that with the Requirement 38 in place the development would not adversely impact safe ATC and aviation navigation, therefore being in accordance with the relevant NPS policies.
- 3.10.45. On the matter of IFPs, it is accepted by the ExA that there can be no final agreement on IFP amendments (if this is necessary) until post-consent, as the final height and location of WTGs are not known at this stage. There was no involvement

from the CAA through the Examination, but it is understood that they would need to agree the final amendments for Shoreham Airport IFPs.

- 3.10.46. The ExA is reassured that this issue with the SoCG between Shoreham Airport and the Applicant is agreed. The ExA also welcomed the introduction of Requirement 39 into the draft DCO. This would ensure that the Secretary of State would have control over this matter and could ensure that the Airport and CAA were content and in agreement with any necessary revised IFPs based on the final design of the WTGs, to provide for aviation safety. However, the ExA have amended to R39, so that there is no specific reference to payment to the airport operator, but simply for adequate compensation. As this amendment was made Post-Examination the Secretary of State may wish to seek the views of the relevant parties to get their comment on the Requirement.
- 3.10.47. The Requirement within the Recommended DCO would ensure that the safety of Shoreham Airport is not compromised by the Proposed Development, particularly the WTGs.
- 3.10.48. The ES states that without mitigation, the potential magnitude of impact would be Major Significant. However, with mitigation the impact would be not significant. For the reasons set out above the ExA agrees with these conclusions.
- 3.10.49. In respect of defence/military aviation, as there has been no comment from the MoD or any associated bodies then there is no reason to doubt that, as recorded in the ES, there would be no significant adverse effect on military aviation, either relating to radar or the adjacent Portsmouth Danger Area. The ExA welcomes the inclusion of Condition 8 of the DMLs which require the Developer to notify the Defence Infrastructure Organisation Safeguarding of the commencement of development of WTGs, their location and height, along with agreed lighting and other safety measures necessary for the turbines.
- 3.10.50. The ES reports that any impacts on military aviation would not be significant. The ExA has no reason to disagree based on the evidence before it and therefore agrees with the ES conclusions. For the reasons given, the Proposed Development would accord with the NPS on this matter.

Conclusions

- 3.10.51. The ExA concurs with ES Chapter 14 – Civil and Military Aviation [REP6-129] that the significance of residual effect from the Proposed Development on these matters would be either No Change or Not Significant from any phase of development.
- 3.10.52. The ExA is satisfied that the Applicant has demonstrated that the impacts associated with the Proposed Development can be satisfactorily mitigated and managed through the commitments identified in the Commitment Register [REP6-227], which are secured by the relevant Requirements and Conditions in the Recommended DCO/DML.
- 3.10.53. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and NPS EN-5 2011 and with other national and local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.

- 3.10.54. The ExA attaches a Little Negative weight to this effect related to civil and military aviation matters in the planning balance.
- 3.10.55. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to aviation and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.11. MARINE ARCHAEOLOGY

The Applicant's Case

- 3.11.1. The Applicant's Case is set out in the ES, Volume 2, Chapter 16 [REP6-133], supplemented by:
- Volume 3 Marine Archaeology figures [APP-096].
 - Volume 4 Appendix 16.1 Marine Archaeology technical report [REP3-017].
 - Outline Marine Written Scheme of Investigation (WSI) [REP6-216].
- 3.11.2. It is also acknowledged that ES Chapter 25 Historic Environment [REP6-153] is relevant to Marine Archaeology given crossover in the intertidal area between the assessments. ES Chapter 16 considers the scope and methodology, before assessing the effects arising from the construction, operation and decommissioning of the Proposed Development. The study area for the marine archaeology assessment is defined as the proposed Order limits up to MHWS surrounded by a 2km buffer seaward of MHWS shown at Figure 16.1 Volume 3 of the ES [APP-096].
- 3.11.3. Within the study area one hundred wrecks were identified of which 41 are classed as LIVE, 25 are classed as DEAD, two are classed as LIFTED, four are classed as UNKNOWN and 28 are recorded losses with no further detail about their status. In addition, there are 17 aircraft losses, 20 fishermen's fasteners, and 14 fouls and seabed obstructions.
- 3.11.4. The combined geophysical data assessments undertaken to identify material of archaeological potential identified anomalies of low, medium, and high archaeological potential within the study area, are detailed in Table 4-1 [REP3-017]. Thirty high potential and 22 medium potential anomalies have been assigned archaeological exclusion zones (AEZs), as shown in Figure 7.7 and Annex D [REP3-017].
- 3.11.5. The MDSs are summarised at table 16-15 of the ES Volume 2, Chapter 16 [REP6-133]. Embedded Environmental measures to reduce potential adverse effects on Marine Archaeology are listed at table 16-16 of the ES Chapter 16 [REP6-133] and the Commitments Register [REP6-227] and include:
- C-57 Marine WSI.
 - C-58 archaeological assessment of offshore geophysical surveys.
 - C-59 geoarchaeological assessments.
 - C-60 avoidance through micro-siting and AEZs.
 - C-111 decommissioning Plan.
 - C-277 post construction monitoring plan.
 - C-298 in principle monitoring plan.

- 3.11.6. The Marine WSI is secured by Condition 11 (2) of the DML within the draft DCO to be approved by the MMO following consultation with the Historic Statutory Body.
- 3.11.7. ES Summary Chapter 31 provides a summary of the residual effects considered within the ES including for Marine Archaeology at table 31-11 [REP6-167]. In summary the ES concludes that during the construction, operational and decommissioning phases a magnitude of impact of either negligible or no perceived change upon marine heritage receptors with the residual effects on Marine Archaeology predicted as not significant.

Examination Issues

- 3.11.8. Marine Archaeology was not considered an Initial Principal Issue in Annex C of ExA Rule 6 Letter [PD-006] and was not a main issue in the Examination. Whilst not included in the IAPI in its RR [RR-146] and WR [REP1-055] HE raised some concerns around marine archaeology which were explored, and which have been considered by the ExA. These included:
- Level of evaluation that has been done in advance of the application
 - Methodology regarding how environmental effects magnitude of impact and level of significance are assessed in the ES particularly regarding embedded environmental measures (EEM's).
 - Adequacy of Outline Marine WSI, Commitments and Conditions of the DML.

Level of evaluation

- 3.11.9. HE was concerned [RR-146] that insufficient evaluation had been done in advance of the application and that geotechnical work was not conducted. HE further advised that such evaluation should be secured post consent but pre-construction and the Outline Marine WSI should provide for geoarchaeological analysis of geotechnical materials. Also, HE did not agree with the Applicant's assessment of historic character of the proposed marine development area.
- 3.11.10. The Applicant responded at Deadline 1 [REP1-017] confirming that archaeological input would be sought ahead of geotechnical campaigns (in accordance with commitment C-59) and evaluation of potential in the marine zone is undertaken by the archaeological assessment of geophysical and geotechnical surveys to be conducted throughout the lifetime of the Proposed Development as detailed in the Outline Marine WSI secured in Condition 11(2) of the DML.

ES methodology

- 3.11.11. HE was concerned [RR-146] that an inaccurate assessment of the magnitude of impact and significance of effect had been undertaken of the embedded environmental measures (EEM), such as recording archaeology before any loss, would not reduce harm or magnitude of impact. Therefore, the downgraded assessment of impact and the resultant effects being classified as not significant is, in HE's view, misguided and misleading.
- 3.11.12. The Applicant responded at Deadline 1 [REP1-017] confirming that the methodology is consistent with the Scoping Report and other Orders including Sizewell C new nuclear build and Yorkshire Green grid connection. The Applicant goes on to explain 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. Further in response to ExA WQ HE 1.11 [PD-009] the

Applicant confirmed that the reference to effects with a significance level of minor or less as not significant at section 16.8 of ES Chapter 16 [REP6-133] is not relevant to this chapter, was included in error and were added to the errata.

- 3.11.13. The matter was not agreed in the SoCG [REP5-096] and determined as having a material impact within this SoCG.

Outline Marine WSI

- 3.11.14. HE was not satisfied [REP1-055] with the standard of the Outline Marine WSI in relation to the embedded environmental measures, responsibilities and communication particularly in regard to archaeological curators, the detail of the scheme of investigation and arrangements for review of the WSI, including the wording of the DML Condition 11 (2) secured by the Recommended DCO
- 3.11.15. The Applicant responded at Deadline 3 [REP3-057] making amendments to embedded environmental measures and responsibilities and communication particularly regarding archaeological curators. The Applicant also further explained how their approach was in accordance with guidance and other made DCO's. HE responded further at Deadline 4 [REP4-087] reiterating their original concerns in the context of the Applicants revised Outline Marine WSI. The Applicant after the ExA FWQ HE 2.3 [PD-012] on Marine Archaeology updated the Outline Marine WSI to address HE's concerns including those in respect of historic character assessments. HE confirmed agreement to the Outline Marine WSI in their closing statement [REP6-314].
- 3.11.16. The ExA issued its Schedule of Changes to the draft DCO [PD-013] in which changes were proposed to the DML as requested by HE. The Applicant responded and the draft DCO was amended at Deadline 5 [REP5-005]. The wording of the DML conditions is considered within the DCO section of this Recommendation.

ExA's Findings

- 3.11.17. NPS EN-3 2011 considers the offshore historic environment and requires assessments to be undertaken as set out in NPS EN-1 2011 which are considered in detail in the Historic Environment section of this Recommendation. NPS EN-3 2011 identifies that:
- Heritage Assets can be affected by OWF from direct physical siting and indirect changes to the physical marine environment.
 - Secretary of State should be satisfied that OWF have been designed sensitivity taking into account known heritage assets and their status.
 - avoidance as the best form of mitigation through the implementation of AEZs.
 - requires the Secretary of State to consider granting consent that allows for micro-siting to be undertaken in circumstances such as the discovery of marine archaeological remain.
- 3.11.18. NPS EN-3 2024 is broadly consistent with NPS EN-3 2011 regarding Marine Archaeology.
- 3.11.19. Whilst HE's views on the level of evaluation are noted, the ExA considers the ES has adequately assessed this aspect of the Proposed Development, and that any harm identified would be sufficiently mitigated within the Recommended DCO. HE's agreement to the Outline Marine WSI provides the ExA with further comfort on this matter.

- 3.11.20. The ExA have had regard to HE's outstanding concerns on the ES assessment methodology. However, the ExA is satisfied that the ES assessment methodology is adequate and in accordance with NPS EN-1 2011 and NPS EN-3 2011 for the assessment of effects on marine archaeology including those associated with the historic character assessments.
- 3.11.21. The ExA is satisfied that the Outline Marine WSI forms an acceptable basis for the final Marine WSI to be derived from.
- 3.11.22. The ExA is satisfied, from the evidence submitted, that the effects on marine archaeology which may arise as a result of the Proposed Development have been adequately assessed in the ES, and that appropriate mitigation is set out in the Commitments Register, [REP6-227] which forms a Certified Document in Schedule 16 of the Recommended DCO, as well as those matters secured within the DML.
- 3.11.23. The ExA agrees that the assessment of residual effect is not significant in terms of effects arising from the Proposed Development, from Marine Archaeology, which could cause harm to marine heritage receptors within the Proposed Development.

Conclusions

- 3.11.24. The ExA concurs with ES Chapter 16 [REP6-133] that the significance of effect from the Proposed Development on marine archaeology would be Negligible (Not Significant).
- 3.11.25. 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 DML within the Recommended DCO. The ExA is satisfied that no significant adverse Marine Archaeology effects are likely to arise from the Proposed Development.
- 3.11.26. The ExA is satisfied that the Proposed Development has been designed sensitivity taking into account known heritage assets and their status. The ExA is also satisfied that the proposed mitigation particularly AEZs, and the Marine WSI accords with the NPS EN-3 in regard to mitigation.
- 3.11.27. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.11.28. The ExA considers there are no residual effects or issues which affect the planning balance.
- 3.11.29. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to marine archaeology and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPS EN-1, EN-3 and where relevant EN-5 2011.

ONSHORE EFFECTS

3.12. TERRESTRIAL ECOLOGY AND NATURE CONSERVATION

The Applicant's Case

- 3.12.1. This Section considers the effects of the Proposed Development on terrestrial ecology and nature conservation. This is distinct from the ExA consideration of matters relevant to offshore ecology and is also distinct from the ExA consideration of matters relevant to the HRA which is contained within Section 4 of this Recommendation.
- 3.12.2. The Applicant's assessment of terrestrial ecology and nature conservation is presented in ES Volume 2 Chapter 22 [APP-063] updated at Deadline 6 [REP6-147] which documents the LSEs of construction, operation and maintenance and decommissioning of the Proposed Development on the terrestrial natural environment, including habitat and legally protected and notable species.
- 3.12.3. A number of supporting figures and appendices were submitted including:
- Appendix 22.2 Terrestrial ecology desk study [APP-180].
 - Appendix 22.3 Extended Phase 1 habitat survey report [APP-181].
 - Appendix 22.4: National Vegetation Classification survey report [APP-182].
 - Appendix 22.5: Hedgerow survey report [APP-183].
 - Appendix 22.6: Fisheries habitat survey report [APP-184].
 - Appendix 22.7: Great crested newt environmental DNA survey report [APP-185].
 - Appendix 22.8: Passive and active bat activity report [APP-186].
 - Appendix 22.9: Hazel dormouse report 2020-2022 [APP-187].
 - Appendix 22.10: Invertebrate survey report [APP-188].
 - Appendix 22.11: Badger, otter & water vole survey report [APP-189].
 - Appendix 22.12: Reptile survey [APP-190].
 - Appendix 22.13: Breeding bird survey [APP-191].
 - Appendix 22.14: Onshore winter bird report [APP-192].
 - Appendix 22.15: Biodiversity Net Gain (BNG) information [APP-193] updated at Deadline 6 [REP6-204].
 - Appendix 22.16: Arboricultural Impact Assessment [APP-194] updated at Deadline 5 [REP5-058].
 - Appendix 22.17: Bat tree ground level visual assessment survey report [APP-195].
 - Appendix 22.18 Passive and active bat activity report [APP-186] updated at the Pre-Examination Procedural Deadline [PEPD-029].
 - Appendix 22.19: Hazel dormouse report 2023 [PEPD-030].
- 3.12.4. The Applicant notes that ES Volume 2 Chapter 22 on terrestrial ecology [APP-063] updated at Deadline 6 [REP6-147], should be read as part of the wider ES with particular reference to:
- Chapter 4: The Proposed Development [APP-045] updated at Deadline 6 [REP6-171].
 - Chapter 9: Benthic, subtidal and intertidal ecology, due to the intersections of habitats at MHWS [APP-050] updated at Deadline 6 [REP6-181].
 - Chapter 12: Offshore and intertidal ornithology, due to the presence of bird species that use marine, intertidal and terrestrial habitats [APP-053] updated at Deadline 6 [REP6-125].

- Chapter 19: Air quality, due to the potential for emissions and dust associated with the Proposed Development to negatively affect habitats, flora and fauna [APP-060] updated at Deadline 6 [REP6-139].
- Chapter 20: Soils and agriculture, due to the potential overlap between priority habitats such as calcareous grassland and soil type [APP-061] updated at Deadline 6 [REP6-143].
- Chapter 21: Noise and vibration, due to the potential for fauna to be disturbed or displaced by noise and vibration associated with the Proposed Development [APP-062] updated at Deadline 6 [REP6-145].
- Chapter 24: Ground conditions, due to some designated sites having both ecological and geological aspects to their designation [APP-065] updated at Deadline 6 [REP6-151].
- Chapter 26: Water environment, due to the close association between ecological features and local hydrology updated at [APP-067] updated at Deadline 6 [REP6-155].

3.12.5. The ES states [REP6-147] the assessment of terrestrial ecology considers the LSE of the Proposed Development on a range of terrestrial ecological features, including statutory and non-statutory designated sites, habitats, including HPI and species including those that receive legal protection and species of principal importance.

3.12.6. Potential effects assessed include:

- Permanent or temporary land take / land cover change resulting in habitat loss or degradation and/or loss of fauna.
- Fragmentation of habitats resulting in a reduction in connectivity and/or exclusion from suitable habitats.
- Increased noise and vibration resulting in disturbance / displacement.
- Increased light levels resulting in disturbance / displacement.
- Changes in hydrology ground water levels and surface water run-off rates resulting in habitat change.
- Pollution events including the liberation of dust, sediments and chemicals resulting in loss or degradation of fauna and flora.
- Introduction of invasive non-native species resulting in habitat degradation.
- EMF and heat generation, resulting in habitat change.

3.12.7. The ES [REP6-147] identifies that ecological features both within the proposed Order limits and within Zones of Influence (Zol) outside of the Proposed Development were assessed for the construction, operation and maintenance and decommissioning phases.

3.12.8. The land within the onshore part of the Proposed Development, landward of the MHWS forms part of the Arun Valley, Adur Valley and the SDNP, with a broad range of habitat types including:

- Farmland consisting of arable land, improved pasture and rough grazing.
- Semi-natural habitats including woodland, semi-improved grassland, scrub, hedgerows and trees.
- Standing water including ponds.
- The River Arun, River Adur, streams and ditches.
- Quarries.
- Built development including roads, residential and commercial premises.

3.12.9. There are range of statutory and non-statutory designated sites including:

- European sites such as the Arun Valley SPA.
- SSSIs such as Climping Beach SSSI.
- LWSs such as Sullington Hill LWS.

- 3.12.10. The ES Chapter 4 [REP6-171], states that the onshore export cable is approximately 38.8km in length running generally in a north-east direction from the onshore connection point at Climping, to the connection with the National Grid at the Bolney sub-station. The cable would be buried for its entire length, sited beneath infrastructure such as roads, railways, watercourses, agricultural land, scrub land and Ancient Woodland. The Proposed Development would involve work such as site clearance, site investigation, establishment of construction compounds, building of haul roads and accesses, trenching including the use of trenchless techniques including HDD, drainage and earthworks. The ES Chapter 22 [REP6-147] states the area supports a range of legally protected and notable species present including a variety of bats, farmland birds, great crested newt and water vole.
- 3.12.11. The assessment methodology for terrestrial ecology is outlined in sections 22.4 to 22.8 of the ES [REP6-147]. The methodology for baseline gathering is presented in section 22.4, which outlines the study area. The level and type of data collection varies due to the presence of multiple ecological features. A data-gathering exercise was undertaken to obtain existing information relating to relevant statutory and non-statutory biodiversity sites, habitats and species of principal importance, legally protected and controlled species and other conservation notable species recorded from 2013 to 2023. Table 22-9 [REP6-147] summarises data gathered during the desk study and Table 22-10 [REP6-147] reports on data sources used to inform the terrestrial ecology and nature conservation assessment.
- 3.12.12. The ES [REP6-147] states that field surveys commenced in July 2020 and continued until June 2023. The field survey programme is summarised in Table 22-11 [REP6-147], with full details provided within Appendices 22.3 [APP-181] to 22.17 [APP-195].
- 3.12.13. Baseline conditions are presented in section 22.5 of the ES [REP6-147], stating the land within the onshore part of the proposed Order limits is approximately 662ha in extent, comprising a range of broad habitat types. Habitats are generally well connected for wildlife via hedgerows, tree lines, rivers, streams and ditches, with minor fragmentation where major roads, for example the A27, are present. The areas of habitat present form part of larger areas of biodiversity interest namely the Arun Valley, Adur Valley and the SDNP. Land management practices are dominated by arable production and sheep, cattle and horse grazing. Many of the woodlands, particularly along the southern sections of the onshore part of the proposed Order limits between Crossbush and Ashurst, form parts of shooting estates and have game bird enclosures present. Some woodland within the area is managed for the commercial production of timber, including hazel coppice and beech plantation.
- 3.12.14. One Ramsar site, two SPAs and three SACs were identified through the desk study, none of which fall within the onshore part of the proposed Order limits. Figure 22.2.2 of Appendix 22.2 [APP-180] illustrates the locations of the six statutory nature conservation sites designated under international conventions or making up the national site network, whilst Table 22-13 [REP6-147] provides information on the designations. A total of 13 SSSIs and one local nature reserve were identified through the desk study. All 13 SSSIs are within 5km of the proposed Order limits. Figure 22.2.2 of Appendix 22.2 [APP-180] illustrates the locations of the statutory

nature conservation sites designated under national legislation, whilst Table 22-14 [REP6-147] provides information on the designated sites.

- 3.12.15. The desk study identified 50 non-statutory nature conservation sites within 5km of the onshore part of the proposed Order limits, of which four are located fully or partially within the onshore part of the proposed Order limits. Figure 22.2.4 of Appendix 22.2 [APP-180] illustrates the locations of the non-statutory nature conservation sites (such as LWS), whilst Table 22-15 [REP6-147] provides information on the designations that are within the onshore part of the proposed Order limits or within 1km of it. The 37 remaining LWSs located outside the onshore part of the proposed Order limits are detailed in Appendix 22.2 [APP-180].
- 3.12.16. Sixteen HPis were identified during the desk study with nine of these being within the onshore part of the proposed Order limits. Ancient semi-natural and ancient replanted woodlands were also identified, as indicated on Figure 22.2.5 of Appendix 22.2 [APP-180]. A breakdown and extent of the habitat types identified within the proposed Order limits is given in Table 22-16 [REP6-147].
- 3.12.17. The ES [REP6-147] notes that it should be recognised that the Priority Habitat Inventory is not an accurate depiction of whether or not the habitats identified meet the criteria to be classed as HPI because it is based on a range of data sources, the majority of which are not based on site survey. In addition, the data is a number of years old and in many instances may not reflect contemporary land uses. The ES gives examples such as a number of areas highlighted as floodplain grazing marsh which are now being used as arable fields within the Arun Valley, and therefore no longer fit the priority habitat criteria for this habitat type. The ES [REP6-147] explains that within the assessment in Section 22.9, priority habitats are considered individually, and as part of a larger resource, for example, woodland identified as meeting the criteria is considered alone and alongside other woodland, to ensure the functionality of a habitat type is adequately described.
- 3.12.18. The broad habitat types identified included:
- Woodland (broadleaved semi-natural, broadleaved plantation, mixed semi-natural, mixed plantation and coniferous plantation).
 - Grassland (amenity, improved, poor semi-improved, neutral - semi-improved and unimproved, calcareous - semi-improved and unimproved, coastal grassland, and marshy grassland).
 - Scrub (dense / continuous and scattered).
 - Hedgerows.
 - Parkland and scattered trees (broadleaved and mixed).
 - Ditches.
 - Standing water (ponds / permanently wet ditches).
 - Running water (rivers and streams).
 - Tall ruderal vegetation.
 - Ephemeral / short perennial.
 - Arable.
 - Man-made habitats such as hard standing and buildings, and 'other' habitats including spoil, brick/stone walls and fences.
- 3.12.19. Table 22-24 [REP6-147] describes which woodland blocks would be directly affected by construction.

- 3.12.20. Veteran trees have been identified through the desk study and arboriculture survey indicated in Table 22-23 [REP6-147] and Appendix 22.16:(AIA) [APP-194] updated at Deadline 5 [REP5-058]. These are few in number and are found mainly towards the northern extent of the proposed Order limits. Of the veteran trees identified, all apart from two, lie along the boundary or outside of the proposed Order limits.
- 3.12.21. The majority of grasslands subject to Phase 1 habitat survey were species-poor. Most areas of poor semi-improved and improved grasslands were heavily grazed with a short sward. There were also areas of more species-rich semi-improved grassland.
- 3.12.22. The ES [REP6-147] identifies areas of unimproved and semi-improved calcareous grassland which qualify as HPI. These occur infrequently and are largely located at the edges of the escarpments of the SDNP. The areas identified by field survey are located at Warningcamp, outside of the proposed Order limits and Sullington Hill, set on a steep gradient with evidence of cattle and sheep grazing.
- 3.12.23. The desk study in Appendix 22.2 [APP-180] identified the presence of the HPI coastal and floodplain grazing marsh in the Arun and Adur Valleys via the Priority Habitats Inventory. As is typical of this habitat type, it was dominated by cattle and sheep grazed pastures with a network of wet ditches. The other dominant habitat present within the area was arable fields.
- 3.12.24. Hedgerows are more frequent in the northern half of the Proposed Development. Hedgerows recorded include examples of native, species-rich and species-poor hedges with trees which were either intact or defunct. In total 239 hedgerows were recorded inside or intersecting the proposed Order limits. The Hedgerow Survey Report, Appendix 22.5 [APP-183] provides details of the hedgerows present in greater detail, including their potential to qualify as important under the Hedgerow Regulations 1997. Figure 22.5.3 [APP-183] shows the locations of the hedgerows.
- 3.12.25. Hedgerows were classed as native and species-rich where they were recorded to comprise greater than 80 percent native species and at least five native woody species in any 30m section. Species-poor hedgerows comprise one or two native woody species. All native hedgerows over 20m in length, both species-rich and species-poor, are defined as HPI. Table 22-25 [REP6-147] describes the hedgerows identified that could be subject to direct effects from construction activity.
- 3.12.26. A total of 1,360 records of vascular plants of 194 species that are legally protected or notable, some at a county level only, were identified within 5km of the proposed Order limits. Sections 22.5.33 to 22.5.35 [REP6-147] lists these in more detail.
- 3.12.27. The terrestrial ecology desk study [APP-180] returned records of badgers inside and within 5km of the onshore part of the proposed Order limits. Much of the land within the onshore part of the proposed Order limits was assessed as providing suitable habitats for badgers. During the field surveys 16 setts were located. Further details on badger survey results are provided in the Badger, Otter and Water Vole Survey [APP-189] however mapping of badger setts is not provided due to the sensitive nature of this information.
- 3.12.28. The terrestrial ecology desk study [APP-180] returned a total of 1,227 records of at least 13 species of bats inside and within 5km of the onshore part of the proposed Order limits, with the most frequent records being for common pipistrelle. Of these, 303 records relate to bat roosts. Bat activity surveys were undertaken between

September 2020 and October 2023 [APP-186, PEPD-029] which confirmed at least eight bat species or genus were utilising habitats within the onshore part of the proposed Order limits and 393 trees with bat roosting potential were identified.

- 3.12.29. The ES [REP6-147] identifies a large number of over-wintering birds within the Order limits and wider area, including a number of notable species:
- Two species listed on Schedule 1 of the Wildlife and Countryside Act 1981 (as amended), Cetti's warbler and firecrest.
 - Nine species listed as Species of Principal Importance: corn bunting, dunnoek, lapwing, linnet, reed bunting, skylark, song thrush, starling and yellowhammer.
 - Eight species recorded as Birds of Conservation Concern red-listed species: corn bunting, greenfinch, lapwing, linnet, nightingale, skylark, starling and yellowhammer.
- 3.12.30. Further detail on the results of the breeding bird survey can be found in Appendix 22.13 [APP-191].
- 3.12.31. Regarding amphibians, the ES [REP6-147] identifies many records of great crested newts and common toad inside and within 5km of the onshore part of the proposed Order limits. Four granted EPS licences within 100m of the proposed Order limits were identified [APP-180].
- 3.12.32. Suitable habitats for dormouse are present within the onshore part of the proposed Order limits in the form of woodland, scrub and hedgerows [REP6-147]. Dormouse surveys took place between 2020 and 2022 across eight areas [APP-187]. Evidence of dormouse was only recorded at the onshore substation site in October 2022.
- 3.12.33. The ES [REP6-147] states that where the River Arun crosses the onshore part of the proposed Order limits, the habitat is suitable for otter activity but is sub-optimal for the establishment of resting places or breeding holts. There was one record of otter within 5km of the onshore part of the proposed Order limits. The record was not made from within the onshore part of the proposed Order limits. Otters are not yet thought to be resident in West Sussex, although populations are expanding in number and distribution across England relatively rapidly.
- 3.12.34. The terrestrial ecology desk study [APP-180] returned 229 records of water vole inside and within 5km of the onshore part of the proposed Order limits, of which four are from within the onshore part of the proposed Order limits.
- 3.12.35. The scope of the assessment for terrestrial ecology and nature conservation is described in section 22.6 of the ES [REP6-147] which states CIEEM guidance (2018) has been followed.
- 3.12.36. There are a large number of embedded environmental measures within the Commitments Register [REP6-227] which relate to terrestrial ecology and nature conservation. These embedded environmental measures generally focus on the following:
- Use of trenchless techniques to cross designated sites and Ancient Woodland to avoid ground works within these areas.
 - The delivery of vegetation retention and removal plans to minimise losses of HPI importance, and others used frequently by species of principal importance.

- Scheduling of construction activity to minimise disturbance to sensitive species such as wintering waterbirds associated with the Arun Valley and Adur Valley.
- Reinstatement of habitats temporarily lost to construction, habitat creation at the substation site and the delivery of a BNG.

- 3.12.37. All Commitments are documented in the Commitments Register [REP6-227] and Table 22-20 [REP6-147] sets out the relevant embedded environmental measures within the design and how these affect the terrestrial ecology and nature conservation assessment.
- 3.12.38. The Commitments for vegetation retention and removal are detailed in Table 1-1 of the Outline Vegetation Retention and Removal Plan (OVRRP) [REP6-269]. The stage specific VRRPs would include detail on how each commitment is to be delivered where that commitment is applicable to that stage of works.
- 3.12.39. The Applicant states in Appendix 22.15 to the ES [REP6-204] that there would be a net loss to biodiversity as a result of the Proposed Development without the delivery of additional off-site biodiversity units. This loss is driven by permanent habitat loss at the onshore substation site and the connection at the existing National Grid Bolney substation and the reduction in biodiversity caused by the risk multipliers assigned to the reinstatement works that are aiming to deliver the same habitat type at the same condition as in the current baseline for the majority of situations.
- 3.12.40. The Applicant states in the ES [REP6-147], that the Proposed Development would deliver a BNG of at least ten percent, so that the environment is left in a better state following development. BNG is calculated using the Statutory Biodiversity Metric, with the outputs describing both the number of biodiversity units required to reach no net loss i.e. a position where residual effects on habitats are compensated for and net gain i.e. an increase in the baseline value of at least 10%. The ES states that in accordance with guidance from Defra, the delivery of net gain is not used when conclusions are drawn about the significance of effects identified but would provide some of the compensation necessary to account for the residual effects.
- 3.12.41. The ES [REP6-147], confirms BNG would be delivered on-site and off-site. On-site delivery would focus on habitat creation at the substation location at Oakendene with other habitats on-site being reinstated to current condition only. Off-site delivery would be front-loaded, so that habitat enhancement was delivered before or during the early stages of construction. The approach to delivering BNG in the local area is described in the BNG Information Appendix 22.15 [APP-193] updated at Deadline 6 [REP6-204].
- 3.12.42. The assessment methodology for terrestrial ecology and nature conservation is set out in section 22.8 of the ES [REP6-147], which the Applicant confirms is aligned with the standard industry guidance provided by CIEEM.
- 3.12.43. The assessment of effects is presented in section 22.9 of the ES [REP6-147] and a summary of residual effects is presented in Table 22-30 of the ES [REP6-147]. This concludes that based on the implementation of embedded environmental measures such as the Code of Construction Practice (CoCP), no significant effects have been identified on terrestrial ecology features during the construction, operation and maintenance, and decommissioning phases.
- 3.12.44. The conclusions of the ES [REP6-147] on individual aspects considered under terrestrial ecology are summarised below:

- The Arun Valley Ramsar site and the Arun Valley SPA, The Mens SAC, Amberley Wild Brooks SSSI / Pulborough Brooks SSSI - Negligible, Not Significant.
- Climping Beach SSSI, Littlehampton Golf Course and Atherington Beach LWS Sullington Hill LWS - Negligible, Not Significant.
- Ancient Woodland - Negligible, Not Significant.
- Veteran Trees – Negligible, Not Significant.
- Woodland and Coastal, floodplain grazing marsh, natural semi-improved grassland and streams and permanently wet ditches – Negligible to Low, Not Significant.
- Native hedgerows – Very Low to Low, Not Significant.
- Baggers – Negligible to Very Low, Not Significant.
- Bats – Very Low to Low, Not Significant.
- Hazel dormouse – Negligible to Low, Not Significant.
- Great crested newt – Negligible to Very Low, Not Significant.
- Reptiles (common species) – Negligible, Not Significant.
- Breeding birds – Negligible to Low, Not Significant.
- Wintering birds - Negligible, Not Significant.
- Water vole – Negligible to Very Low, Not Significant.

3.12.45. ES Chapter [REP6-147] concludes with an assessment of cumulative, transboundary and inter-related effects. No significant cumulative effects were identified in relation to the Proposed Development on terrestrial ecology features during the construction, operation and maintenance, and decommissioning phases.

3.12.46. No significant inter-related effects of greater significance compared to the effects considered alone were identified on terrestrial ecology features during the construction, operation and maintenance, and decommissioning phases.

3.12.47. No significant transboundary effects were identified on terrestrial ecology features during the construction, operation and maintenance, and decommissioning phases.

Examination Issues

3.12.48. The main issues arising during the Examination relating to biodiversity and terrestrial ecology are presented in three main categories for the purposes of this Recommendation:

- vegetation and habitat loss;
- construction risks to fauna and flora; and
- BNG.

Vegetation and habitat loss

3.12.49. The main issues arising during the Examination relating to the anticipated worst-case for vegetation and habitat loss from the Proposed Development were:

- Inconsistencies across the documentation from the Applicant relating to vegetation retention and loss.
- Vegetation and habitat loss in the vicinity of the proposed Oakendene sub-station and at the existing Bolney sub-station.
- Vegetation loss and quality of terrestrial ecological surveys in the vicinity of Crateman's Farm and Taintfield Wood.
- Impacts on severance and loss of connectivity of Ancient Woodland areas, especially in the vicinity of Kitpease Copse and Oliver Copse.

- Vegetation loss from construction access.
- Loss of hedgerows, woodland, trees, treelines, scrub and grassland from the Proposed Development as a whole.
- Quality of proposed mitigation, compensation and reinstatement for vegetation loss.

Inconsistencies across the documentation from the Applicant, in particular relating to vegetation retention and loss

- 3.12.50. Inconsistencies relating to vegetation retention and loss were found between documents the Applicant submitted into the Examination by the ExA and Local Authorities [REP4-086] during the course of the Examination. The ExA requested in WQ TE 2.1 [PD-012] that the Applicant should undertake a thorough review of the documentation to identify and rectify any inconsistencies. The ExA also requested in WQ CR 2.5 and TE 2.1 [PD-012] for the Applicant to consider committing that if inconsistencies are discovered at the post-consent stage between specific Commitments in the Commitments Register and those within the relevant topic documents relating to a specific matter, the Commitment which has the least environmentally damaging scenario must prevail.
- 3.12.51. The Applicant responded at Deadline 5 [REP5-119] to confirm a review had taken place on key documents, some of which had then been updated for consistency and that an OVRRP had been provided at Deadline 5 [AS-044] updated at Deadline 6 [REP6-269], as requested by the ExA. The Applicant confirmed in response to WQ TE 2.1 [REP5-119] that the worst-case had been presented in the ES and that the Commitments Register at Deadline 5 [REP5-086] updated at Deadline 6 [REP6-227] had been amended to state in Paragraph 1.2.3 that in the event that there is an inconsistency in the commitments in this register and the detail provided in the related application documents referenced herein, the least environmentally damaging scenario shall prevail.

Vegetation and habitat loss in the vicinity of the proposed Oakendene substation and the existing Bolney substation

- 3.12.52. The degree of vegetation loss to the proposed Oakendene sub-station area was a key issue which featured in LIRs including West Sussex CC [REP1-054], Horsham DC [REP1-044]. Concern regarding the extent of vegetation and habitat loss at the Oakendene substation site was also raised by a number of IPs in their WRs including Ms Creaye [REP1-106], Ms Smethurst [REP1-132], CvR [REP1-087], Mr Luce [REP1-146], Mr Guy [REP1-077] and Ms Ball [REP1-097]. The Applicant responded to WRs at Deadline 2 [REP2-030].
- 3.12.53. The effects on wildlife corridors, trees and hedgerows of the proposed substation at Cowfold/Oakendene was examined at ISH1 in agenda item 4vii [REP1-033]. The Applicant confirmed at ISH1 that the habitats to be lost at Oakendene would include native hedgerow which qualifies as a Habitat of Principal Importance under the UK BAP priority habitat descriptions and a loss of Category A oak trees, confirming this loss cannot be avoided due to the scale of the proposed substation.
- 3.12.54. The ExA visited the Oakendene site for the proposed substation during the ASI and observed the vegetation and habitat that would be affected. Subsequently, at Deadline 4 and Deadline 5 the Applicant confirmed updated key statistics regarding the degree of vegetation and habitat loss at the proposed sub-station location at Oakendene in the AIA [REP5-058]. Section 7 reports effects of the Proposed

Development. This states that the creation of the Oakendene onshore substation would be associated with 9% of tree removals by canopy area and 40% of hedgerow removals [REP5-058 p69] from the Proposed Development. Headline statistics of vegetation and habitat loss to accommodate the new substation at Oakendene are:

- Eleven Category A trees would be removed within the footprint of Oakendene Substation (out of 14 Category A trees in total for the Proposed Development) [REP5-058 p71].
- Ten Category B trees would be removed to accommodate the new substation [REP5-058 p71].
- Over half a kilometre (545 meters) of hedgerow would be permanently removed [REP5-058 p75].

3.12.55. West Sussex CC stated in its LIR [REP1-054] and again in its Deadline 6 closing position statement [REP6-280] that the proposed Oakendene Substation would require the permanent loss of two high quality (Category A) trees approaching the criteria for veteran status (T247 and T262). It adds that the remnant features of the field system characteristic of the surrounding landscape, which were likely to have been purposely planted/retained would be lost. West Sussex CC considers the loss of these aged and important trees to be a 'lifetime' effect as the proposed tree planting bordering and within the substation area would take centuries of careful management to replicate their size and characteristics.

3.12.56. West Sussex CC stated in its Deadline 6 closing position statement [REP6-280], that the removal within the Oakendene site of Category A and B trees, and the permanent loss of hedgerow, some of circa. 200 years old, presents a significant loss of arboricultural features that are not able to be compensated for in full within the area of the substation and not necessarily in the area surrounding it. West Sussex CC stated [REP6-280], that this demonstrates the retention of important arboricultural features was low on the agenda when the Applicant was considering suitable substation locations and associated constraints. This point was also made by Ms Smethurst [REP1-132], Ms Creaye [PEPD-076] and CvR [REP1-087], who claimed many of the ecological studies were only carried out after the substation location was chosen.

3.12.57. The Applicant outlined the alternatives considered for the substation location at Oakendene in its response to CvR's WR [REP2-030 Appendix A]. In addition, the Applicant provided a response to WQ TE1.7 [REP3-051] confirming that the tree survey at Oakendene took place in June 2021 prior to the decision on substation location being determined. The Applicant adds that the survey results did not identify veteran trees, but the hedgerows with trees were recognised as a priority habitat and this was taken into account when all environmental and engineering constraints were being considered in the round. The Applicant confirmed [REP3-051] that once Oakendene had been proposed as the preferred onshore substation location the realistic worst-case scenario footprint for the substation was finalised and located in the most appropriate position accounting for environmental constraints, including visual impact and deliverability, such as access and compound locations.

3.12.58. West Sussex CC commented on the Applicant's response to WQ TE1.7 at Deadline 4 [REP4-086], stating that the Applicant's response lacked confidence that assigned tree values in accordance with BS5837:2012 were a consideration for selection of any substation location. This was followed up in WQ TE 2.5 which asked the

Applicant to justify the extent of Category A trees at the Oakendene location in terms of both alternative sites and alternatives to tree loss.

- 3.12.59. The Applicant responded [REP5-119] stating that the onshore substation footprint had been designed to represent a realistic worst-case scenario, allowing enough space to account for the greatest power output possible from the wind farm and accommodate four transmission cables. The Applicant confirmed the footprint was optimised, with extent minimised, based on the Oakendene site shape, with effort made to avoid loss of trees. Changing the design (for example to be narrower on an east west axis, but longer on a north south axis would have seen the loss of additional trees that are to be retained further north within the site and that it was necessary to consider optimal placement with regards landscape and visual effects, the setting of Oakendene Manor and areas of flood risk.
- 3.12.60. The Applicant added that at the detailed design stage Commitment C-292 in the Commitments Register [REP6-227] would operate to ensure that avoidance of as many trees as possible is considered appropriately in light of other constraints.
- 3.12.61. Further reporting on the consideration of the choice of substation location is reported on in the Alternatives chapter of this Recommendation.
- 3.12.62. The Applicant submitted an updated Oakendene Substation Indicative Landscape Plan in the updated Design and Access Statement (DAS) at Deadline 3 [REP3-014] updated at Deadline 5 [REP5-023].
- 3.12.63. Horsham DC stated at Deadline 6 [REP6-277] that:
- “it does not find the information submitted under the Outline Vegetation Retention and Removal Plan REV A [REP5-125] provides the level of detail that is helpful to understand the extent of vegetation removal and reinstatement to be carried out, particularly at site scale in the vicinity of Kent Street and the Oakendene substation, and therefore welcome the ExA’s 17th July recommended amendments under DCO Requirement No. 8 (c).”*
- 3.12.64. There was concern from West Sussex CC at Deadline 4 [REP4-086] that the Applicant had made an incorrect or misleading statement regarding the retention of hedgerows at the Oakendene West Construction compound, indicating that all existing vegetation (trees and hedgerows) within the Oakendene West Construction Compound would be retained. The Applicant responded at Deadline 5 [REP5-119] to say it acknowledged that loss of hedgerow H612 at the access point would occur and that the updated the Outline Landscape and Ecology Management Plan (OLEMP) [REP6-212] had been updated to reflect this.
- 3.12.65. The degree of vegetation loss at the existing sub-station at Bolney featured in West Sussex CC’s LIR [REP1-054]. The Applicant confirms in the AIA [REP5-058] that the extension of the existing National Grid Bolney Substation is responsible for less than 1% of tree removals by canopy area and no hedgerow removal. G1075 trees flank the eastern perimeter of the existing National Grid Bolney Substation which connects to woodland along Bob Lane and that removal of 0.2ha of trees is proposed.
- 3.12.66. West Sussex CC raised a concern at Deadline 4 [REP4-086] that the impact on deciduous woodland, a priority habitat at the Bolney substation, was not clear at this location due to inconsistencies between various plans and figures. The Applicant

responded at Deadline 5 [REP5-119] in response to WQ TE 2.3, stating there was an error in the AIA [REP4-037] and the woodland block would be retained.

3.12.67. Ancleggan Ltd raised a concern regarding the effect on trees from the cable route into the Bolney substation in its RR [RR-012], WR [REP1-066] and again at Deadline 3 [REP3-092], stating the Applicant had failed to demonstrate that the avoidance of undue impact on trees had been considered in the design process, particularly on the G248 group of trees and that the cable corridor could minimise tree loss by passing through a gap in the treeline impacted by ash dieback rather than through mature Oak trees. The ExA viewed this location during the ASI.

3.12.68. The Applicant responded [REP4-070] stating that Commitment C-292 commits the mitigation hierarchy to be applied at the detailed design stage so that tree losses would be minimised as far as is possible.

3.12.69. Concern raised by West Sussex CC in [REP4-086] that if habitat created at Oakendene Substation should not be considered as BNG, whether it would still be managed and monitored for a minimum of 30 years. The Applicant confirmed at Deadline 5 in response to WQ BNG 2.5 [REP5-119] that it intends to manage habitats at the onshore substation at Oakendene for BNG and has the opportunity on the basis of the outline agreements with the landowner to deliver this.

Vegetation loss and quality of terrestrial ecological surveys in the vicinity of Crateman's Farm and Taintfield Wood

3.12.70. The extent of vegetation loss in the vicinity of Crateman's Farm, particularly the loss of hedgerows and scrub vegetation, featured heavily in the Examination through representations from the CvR residents' group and Ms Creaye an IP. Ms Creaye raised concerns regarding the extent of hedgerow and scrub habitat loss in her RR [RR-164], WRs [REP1-106 to REP1-114] and during ISH1 [REP1-033], particularly emphasising the potential effects on red listed species such as nightingale.

3.12.71. Ms Creaye raised concerns [RR-164], [PEPD-077] and [REP1-106 to REP1-114] regarding the quality of the ecological surveys by the Applicant, and potential impacts on ecology including meadows, scrub, hedgerows, trees and wider flora and fauna in the vicinity of the proposed Oakendene sub-station, Crateman's Farm and Taintfield Wood, all located towards the northern end of the cable route. These included descriptions and videos of the meadows at Crateman's Farm.

3.12.72. Ms Creaye raised concern over the potential effects on ecology of open cut trenching and the construction of a haul road through these areas, providing additional comments at Deadlines 2 and 3, [REP2-056 and REP3-112]. At Deadline 4, Ms Creaye's representation [REP4-112] and a representation on behalf of Mr Facer [REP4-140] contained results from a new survey undertaken by Arborweald at two fields (A and B) at Crateman's Farm, which challenged the Applicant's ecological assessment of these fields in the ES [APP-063 Figure 22.3.k] and the Extended Phase 1 habitat survey report [APP-181] of 'poor semi-improved' and 'improved'. The new survey [REP4-112] categorised these field as 'unimproved lowland meadows' stating that the fields should qualify as BAP Priority Habitat.

3.12.73. At Deadline 5 Ms Creaye submitted further written evidence [REP5-163] and video evidence [REP5-188 to REP5-191] into the Examination describing the ecological value of two further fields Talbot & Baker I and II, in close proximity to the original two fields (A and B) from a recent survey undertaken by herself. Her submission

challenged the Applicant's assessment of these fields, raising doubt on the locations which had been surveyed by the Applicant.

- 3.12.74. CvR cited similar concerns to Ms Creaye [REP1-086 and REP4-105] stating that it believed the Applicant was downplaying the significance of the meadowland value at Crateman's Farm, which it stated should be designated as a SSSI.
- 3.12.75. This issue was examined through WQs, specifically WQ TE 1.5 [PD-009], to which the Applicant provided a response [REP3-051], providing information such as the number, types and dates of surveys undertaken, and the level of qualifications and experience of those who undertook the surveys and stating which guidelines were followed.
- 3.12.76. Statements were submitted by IPs, particularly Ms Creaye [REP1-106] and CvR [REP1-089] that they believe the fields in the vicinity of Crateman's Farm contain ecologically sensitive and irreplaceable priority habitat. The Applicant responded [REP2-029] to Ms Creaye's WR and acknowledged in [REP3-051] that not all areas that might meet the designation criteria for SSSIs, SACs or SPAs are designated, but that it does not agree that the area in question contains irreplaceable habitat or meets the criteria to be designated at a European level, i.e. as a SAC. The Applicant asserted [REP2-029] that to be considered an SAC a site must support habitats listed on Annex I or species listed on Annex II of the Habitats Directive. The Applicant stated that the area around Crateman's Farm does not contain habitat that meets criteria to meet any Annex I habitat and Annex II species do occur in the area including great crested newt, otter and barbastelle bat, as they do across large areas of south-east England. However, the Applicant stated the species would not qualify under selection criteria for nationally important SSSIs and therefore do not meet those to consider it important at a European level.
- 3.12.77. The Applicant continued [REP3-051], to define irreplaceable habitats in the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024, stating that none of the habitats listed, other than Ancient Woodland or ancient and veteran trees, could occur in the area around Crateman's Farm due to both the inland location and the soil types required to meet the priority habitat descriptions of these habitats as published by the JNCC. The Applicant concludes that irreplaceable habitats as defined by the UK Government are not present at Crateman's Farm or in the surrounding area.
- 3.12.78. Regarding priority habitat, the Applicant notes in its response to WQ TE 1.5 [REP3-051], that NE's Technical Note TIN110 acknowledges that created or restored grasslands can become priority habitats. The Applicant stated [REP3-051] its view that that these fields do not meet the criteria based on survey results. The Applicant added a new Commitment (C-294) at Deadline 3 which states:
- "To inform the detailed design process and biodiversity net gain calculations habitat surveys of areas that may be subject to temporary or permanent loss will be undertaken during the spring and summer period. Surveys will follow UK Habitats Classification methodology with potential Habitats of Principal Importance subject to National Vegetation Classification survey."*
- 3.12.79. The Applicant asserts [REP3-051] this makes it more explicit that a full update of the habitat surveys would take place to inform the detailed design process and the BNG calculations. This is aligned with a further new commitment (C-292) at Deadline 3,

secured via Requirement 22 of the draft DCO [REP3-003], updated at Deadline 6 [REP6-007], which states;

“During detailed design the mitigation hierarchy will be applied to avoid losses of key habitats (e.g. woodland, hedgerows, scrub, watercourses and semi-improved grassland) where possible, and where not, to minimise losses and mitigate for them. At each crossing of sensitive habitats the Ecological Clerk of Works will provide advice to the design engineers with justification of approach provided. The approach at individual crossings will be detailed in the relevant stage specific Code of Construction Practice.”

- 3.12.80. The Applicant stated [REP3-051] that appropriate measures are in place to manage the effects on the fields identified by Ms Creaye and that open trenching in this area is appropriate as even with trenchless technology a haul road would be required in this location for access. The Applicant concludes that on the basis that this habitat could be restored, the Applicant’s survey information and generally applied criteria for use of trenchless crossings the Proposed Development as described is considered appropriate.
- 3.12.81. Horsham DC confirmed at Deadline 3 [REP3-069], in response to the WQ TE1.5 that the only irreplaceable habitat recorded within the vicinity of Oakendene and Crateman’s Farm are pockets of Ancient Woodland in and near to Taintfield Wood and Farm which is outside the Order limits [REP3-069]. Horsham DC also stated that whilst there are no areas of lowland meadow identified within the immediate area of Crateman’s Farm and Moatfield Farm on the Priority Habitat inventory, this is not definitive, as many habitat parcels not yet listed on the register are or can become priority habitat. Horsham DC stated that having read the ecological report provided by Ms Creaye [REP1-106], the majority of the area is described as good quality semi-improved grassland and primarily comprises ‘MG-6’ with areas of high quality at the edges of the fields comprising ‘MG-8’ (lowland meadow). Following this, some areas of grassland ‘could be’ classed as ‘MG-5’ (lowland meadow). Given this description and areas of ambiguity, Horsham DC considered it likely that this grassland is semi-improved grassland of a high quality, with potential for restoration to lowland meadow given its lack of historical management. Horsham DC agreed with the Applicant that the outcome of the ES would not alter with further survey and amendment to high quality semi-improved grassland, and there would be a marginal increase in BNG baseline units.
- 3.12.82. Horsham DC concluded [REP3-069], that Commitment C-103 provided acceptable mitigation for open cut trenching through this area, as semi-improved grassland would begin to be reinstated to their current condition. Horsham DC added that as per Section 9.3.4 of Applicant’s Response to Non-Prescribed Consultees’ WRs [REP2-030], should the baseline and condition be reassessed post-consent and as a result, meeting the definition of semi-improved species-rich grassland, Horsham DC would expect removal of this habitat to be justified and accounted for through provision of BNG as per C-220 but added:
- “if future surveys confirm that this is lowland meadow, suitable mitigation such as HDD techniques must be investigated” [REP3-069].*
- 3.12.83. West Sussex CC confirmed at Deadline 4 [REP4-086] in response to the ExA WQ TE 1.5 that the meadows at Crateman’s Farm are:

“clearly of nature conservation value, regardless of whether they qualify as lowland meadow priority habitat”.

- 3.12.84. West Sussex CC added that it was reassuring that semi-improved grassland would be subject to National Vegetation Classification surveys during the detailed design phase, as stated by the Applicant in paragraph 4.6.1 of the OLEMP Rev. B [REP3-037] and that these surveys must inform any reinstatement. West Sussex CC welcomed [REP4-086] the new Commitment C-294, relating to habitat surveys to inform the detailed design process and BNG calculations.
- 3.12.85. Clarification of vegetation loss in this area was questioned by the ExA in WQ TE 2.11 and TE 2.32 [PD-012] to which the Applicant responded in [REP5-119] with clarification, explanations and justifications for the removal of vegetation in the vicinity of Crateman’s Farm, concluding that the Applicant has not proposed to extend the trenchless crossings specified in the area as the proposed outline design has avoided the sensitive environmental features that necessitate mitigation.
- 3.12.86. At Deadline 5 West Sussex CC stated in its Deadline 5 submission [REP5-134] that the recent ecological surveys submitted by Ms Creaye at Deadline 4 [REP4-112] highlight that several meadows at Crateman’s Farm appear to be of greater ecological value than previously assessed by the Applicant. West Sussex CC suggested that the Applicant could re-assess the status of these meadows in the light of this information provided and that the Grassland Retention Plans, cable laying method and habitat reinstatement should be reassessed post re-assessment, suggesting that modifications may be required.
- 3.12.87. The Applicant responded to West Sussex CC’s Deadline 5 submission [REP5-134] at Deadline 6 [REP6-274] stating that paragraphs 4.61 and 4.62 of the OLEMP [updated at Deadline 6 REP6-212] were updated to include for turf stripping, storage and replacement as an appropriate means of reinstatement for meadows with ecological importance and that Chapter 22 of the ES has been updated at Deadline 6 [REP6-147] to demonstrate that the inclusion of the fields in question as ‘neutral semi-improved grassland does not result in a significant effect being predicted and that the mitigation measures already in place are appropriate. The Applicant added that the OVRRP has been updated at Deadline 6 [REP6-269] to provide confidence that particular attention would be given to this area during the detailed design stage. The OVRRP [REP6-269] states in Paragraph 2.4.1 that:
- “Two fields identified by a stakeholder at Crateman’s Farm as supporting higher quality grassland than identified in Appendix 22.3 Extended Phase 1 habitat survey [APP-181] have been added to Figure 7.2.4 Vegetation Retention and Removal Plans – Grassland and Table 2-3. These have been added to highlight them for additional scrutiny during the pre-commencement surveys secured via commitment C-294”.*
- Impacts on severance and loss of connectivity of Ancient Woodland areas, especially in the vicinity of Kitpease Copse and Oliver Copse*
- 3.12.88. Concern was raised by West Sussex CC in its LIR [REP1-054], that the proposed open cut trenching method through tree group G887 would temporarily sever connections from the adjacent Ancient Woodland site, Olivers Copse, from the nearby woodland, Kitpease Copse. West Sussex CC suggested that using a trenchless crossing in this area would significantly reduce impacts on the tree group, and consequently reducing negative impacts on landscape character and the

visual amenity of users of the Public Right of Way. The Applicant responded in [REP2-020] to say an open cut trenching method in this location has been specified as it lies within a Source Protection Zone (SPZ) for potable groundwater.

- 3.12.89. The EA confirmed in response to WQ TE1.8 in [REP3-148] that the location is within SPZ2 in area of a known karstic aquifer and that undertaking HDD at this location could pose a risk to the public water supply through possible interruption of the karstic flow, introduction of contaminants into the aquifer or increased turbidity of the groundwater. The EA confirmed it has agreed the proposed open cut trenching method with the Applicant and based on discussion it has had about the risks at this location.
- 3.12.90. The Forestry Commission commented at Deadline 3 [REP3-103] stating it advised that in order to comply with the mitigation hierarchy, connectivity should be retained as far as possible and that any residual loss of connectivity should be compensated with significant and targeted habitat creation and enhancement to improve connectivity between new and existing woodland habitat.
- 3.12.91. The Applicant responded at Deadline 4 [REP4-079] in response to concerns regarding loss of connectivity in general, stating that other than at the connection point at the Oakendene substation, all losses are temporary, with scrub to be established at reinstatement. The Applicant contended that these woodlands are generally isolated from each other but are connected by hedgerows and scrub in the wider landscape. Losses in each location are small and would not result in a significant change to connectivity either locally or at a wider landscape scale. The majority of the losses would be highly localised and small with either a loss of 6m or 14m, made up of a 6m notch and four 2m notches, which are small enough to ensure that species such as bats and dormice could still move through these areas. The Applicant added that Commitment C-291 (Commitments Register [REP3-049] (updated at Deadline 6 [REP6-227])) has been adopted to ensure that between construction and reinstatement structures such as dead hedging, straw bales or willow hurdles, the potential effects of fragmentation are minimised secured via Requirement 22.
- 3.12.92. A response from Southern Water Services Ltd (SWS) at Deadline 4 [REP4-126] confirmed that trenchless excavation in the Olivers Copse area would be problematic due to the hydrogeological sensitivity of the area and proximity to the public groundwater abstraction source. In this response, SWS confirmed that an HDD crossing method has greater risk than an open cut method at this particular location and therefore SWS's preference would be for an open cut method to be adopted.
- 3.12.93. In its Deadline 5 submission [REP5-134 paragraph 2.65] West Sussex CC continued to state an open cut crossing would lead to the severance of Oliver Copse and Kitpease Copse, both of which are of Ancient Woodland status and further connect with surrounding Ancient Woodland sites that are situated within the SDNP.
- 3.12.94. The ExA did not consider it necessary to explore the matter further given it was considered sufficient information had been provided to reach a judgment.

Vegetation loss from construction access

- 3.12.95. West Sussex CC raised concerns regarding vegetation loss due to construction access in section 3.70 of its Deadline 4 submission [REP4-086]. West Sussex CC stated [REP4-086] it would welcome a commitment within the OCoCP and OLEMP which details how reinstatement of access points would be addressed due to the uncertainties set out in its Deadline 4 submission [REP4-086].
- 3.12.96. The Applicant responded at Deadline 5 [REP5-122], stating the increase in habitat loss predicted was due to further design of access points in response to the ExA request for further detail (Action Point 23) at ISH1 [EV3-020] providing a realistic worst-case scenario. The Applicant confirmed that in relation to West Sussex CC's comment about level of detail, that the OVRRP [REP5-125] submitted at Deadline 5, updated at Deadline 6 [REP6-269], shows the entirety of any feature within the proposed Order limits to avoid an unrepresentative impression on the level of design detail being given. The Applicant added that the exact routeing of onshore cables and temporary construction haul roads would not be known until the detailed design phase but that the implementation of Commitment C-292 [REP6-227] ensures that the mitigation hierarchy would be implemented at the detailed design phase, for example, aiming for gaps in currently defunct hedgerows. The Applicant confirmed that at access points there is more knowledge of where access would be taken, although there is still opportunity for micro-siting.
- 3.12.97. In response to West Sussex CC's concern that more losses might be identified at the detailed design stage, the Applicant confirmed [REP5-122], that the updates at Deadline 5 are based on a worst-case scenario and that Requirement 40 of the draft DCO [REP4-004] updated at Deadline 6 [REP6-007], requires the production of stage specific Vegetation Retention and Removal Plans which provides the mechanism for the relevant local planning authorities in consultation with the EA, the SNCB, the highway authority and the lead local flood authority (LLFA), to agree the extent of vegetation clearance.

Loss of hedgerows, woodland, trees, treelines, scrub and grassland as a result of the Proposed Development as a whole

- 3.12.98. The temporary and permanent impacts on hedgerows and degree of hedgerow, tree and other habitat loss was a key issue which featured in the LIRs from LPAs including West Sussex CC [REP1-054], Horsham DC [REP1-044], the SDNPA [REP1-049] and representations from CvR [REP1-089], Ms Creaye [REP1-106] and many local residents and IPs.
- 3.12.99. The issue of construction effects on hedgerows and trees was examined at ISH1 in agenda item 5ii [REP1-033] resulting in Action 22 [REP1-018] for the Applicant to present vegetation loss information more clearly.
- 3.12.100. The Applicant submitted an OVRRP into the Examination at Deadline 5 [REP5-125] updated at Deadline 6 [REP6-269] of which Section 2 gives the following quantum of hedgerows affected:
- Number of hedgerows affected by the Proposed Development = 104.
 - Number of hedges from which parts would be removed = 67.
 - Length of hedgerow lost (permanent and temporary loss) = 1,960m.
 - Total length of hedgerow to be removed = 1,576m (page 75).

- Length of hedgerow temporarily lost = 1,310m (of which 318m is species rich – p180 REP6-147]).
- Length of hedgerow permanently lost = 650m (of which 0m is species rich – p180 REP6-147]).
- Length of important hedgerow temporarily lost = 140m (44m ecologically important and 96m historically important).
- The total length of hedgerow that would be permanently removed due to the construction of the onshore Oakendene substation = 545m (page 75).
- Length of important hedgerow permanently lost = 0m.
- Length of potentially important hedgerow temporarily lost = 84m.
- Length of potentially important hedgerow permanently lost = 0m.
- 52% of hedgerow removal is associated with open cut cable installation [p69 REP5-058].
- Number of hedgerows affected in the SDNP = 27.
- Length of hedgerow temporarily lost in the SDNP = 327m.

- 3.12.101. The Applicant presented hedgerows and tree lines within the Order limits subject to temporary or permanent losses in Table 2-1 of the OVRP [REP6-269].
- 3.12.102. The Applicant confirmed within the AIA updated at Deadline 5 [REP5-058 p75], that it is likely that a majority of the hedgerow that would be affected by the Proposed Development would meet the description of Hedgerow Habitat of Principal Importance, confirming that the vast majority could be replaced at the same location post-construction and any loss of connectivity or screening function would therefore be temporary. The Applicant continues that Commitment C-104 to BNG would result in enhancements or creation of hedgerows in the local area.
- 3.12.103. At Deadline 5 the Applicant confirmed [REP5-122 pE16] that on the request of stakeholders Commitment C-115 has been altered to say that hedgerow would either be removed (felled) or translocated (i.e. translocation is not a blanket option) and updated the OLEMP [REP5-072] updated at Deadline 6 [REP6-212] to describe when and how hedgerows for translocation would be identified by an experienced practitioner, but that the assessment in the ES is based on a worst-case of felling and replanting.
- 3.12.104. NE raised a number of concerns in its Risk and Issue Log [REP1-059a] regarding the loss and reinstatement of hedgerows. By Deadline 6 Risk and Issues Log [REP6-296] confirmed that these were all categorised as either resolved or not material.
- 3.12.105. The Applicant confirmed in the OVRP [REP6-269] that:
- Thirteen blocks of woodland would be subject to losses.
 - Permanent loss of 0.12ha would occur in woodland W3712 at the Bolney substation where the connection would be made and its loss is therefore unavoidable.
 - Losses in areas that are assumed to be restored to scrub equate to 0.37ha.
- 3.12.106. Table 2-2 in the OVRP [REP6-269] provides details of the area lost for each broadleaved woodland within the proposed Order limits.
- 3.12.107. The Applicant confirmed [REP6-269], that woodland would be lost temporarily in the sense that vegetation would be established across the wayleave, in the form of scrub as opposed to woodland in order to protect the cables from potential damage from tree roots. This scrub may be planted, allowed to regenerate naturally or be

established as a hybrid of these two methods. These details would be confirmed in the stage specific Landscape Ecological Management Plan (LEMP) for the approval of the relevant LPA.

- 3.12.108. The Applicant confirmed in Table 7-3 of the AIA [REP5-058], that 14 Category A, 29 Category B and 66 Category C trees would be removed.
- 3.12.109. There was confusion during the Examination as to whether individual trees T609, T611, T613 & T617, including high and moderate quality trees, specifically pedunculate oaks of middle / mature age above a trenchless crossing, were identified for removal despite being within an area of trenchless crossing through HDD. This was questioned in WQ TE 1.9 and WQ TE 2.4. The Applicant confirmed [REP5-119] that trees T609, T611, T613 and T617 would be retained.
- 3.12.110. The ExA requested the Applicant to explain and justify the loss of Category A trees in particular locations in WQ TE 2.6 and TE 2.10 [PD-012]. The Applicant responded to all queries at Deadline 5 [REP5-119] providing a justification in each circumstance. Reasons given included engineering complexity, increased cost, constraints by veteran tree buffers and requirement of flexibility.
- 3.12.111. The Applicant stated that no veteran trees are proposed to be lost from the Proposed Development [REP5-058 p73]. This is secured through Commitment C-174, by Requirement 22 primarily through design avoidance. Commitment C-174 states that ground works within a buffer zone of 15 times the diameter of the tree or 5m from the edge of the tree's canopy would be avoided. Should transmission cables go under a veteran tree via a trenchless crossing, a depth of at least 6m below ground within the buffer zone would be maintained to avoid root damage.
- 3.12.112. The Applicant confirmed in the OVRRP [REP6-269] that the number of tree lines affected by the Proposed Development would be 33 and the length of tree line lost temporarily would be 474m, none of which would be permanently lost. Tree lines within the proposed Order limits subject to temporary or permanent losses are reported in Table 2-1 [REP6-269].
- 3.12.113. A treeline feature known locally as the 'green lane' through which the Applicant has proposed open cut trenching for the cable installation, was brought to the attention of the ExA in WRs submitted by Ms Creaye [REP1-106 page 87]. The representation stated it had been in existence for at least 150 years consisting of a double row of trees with a bank one side, a very old line of twisted field maples and many oak trees some of which Ms Creaye stated were classed as veteran because of their unique features adding that it is a wildlife corridor and track for deer, rabbits and badgers coming off Woodcock Shaw and Buckhatch Lane, which dates from before 1649. Ms Creaye stated that one oak tree is over 200 years old (385cm girth) in this vicinity and another in the middle of the construction route is over 150 years old (290cm girth).
- 3.12.114. The 'green lane' feature was specifically pointed out to the ExA by IPs during the ASI. Subsequently, the ExA asked the Applicant during ISH2 [REP4-072] to confirm the significance that had been given to this feature and to justify its removal, Action point 29 [REP4-074]. The Applicant responded [REP4-074], stating this feature would not be removed in its entirety, but subject to the loss of up to 14m (one 6m notch and four 2m notches). The Applicant stated that the Arboricultural Impact Assessment, of the ES [APP-194] updated at Deadline 5 [REP5-058], showed this feature as G29 and G35, with G29 showing the understorey as a grown out

hedgerow and G35 are hedgerows standard trees of Category A status but that they are not veteran or ancient and are akin to others that are assumed to be lost in the realistic worst-case scenario. The Applicant added [REP4-074], that during detailed design loss of the standard trees would seek to be avoided or minimised as far as practicable by following the mitigation hierarchy (as per commitment C-292) by micro-siting the cable trenches and haul road through existing gaps. This would be subject to detailed design and would be confirmed in the stage specific Codes of Construction Practice as per Requirement 22 of the draft DCO [REP3-003] updated at Deadline 6 [REP6-007].

- 3.12.115. In response to this Action Point, the Applicant confirmed it had also considered application of a trenchless crossing in this area, noting this would not avoid all loss as a haul road of 6m would still be required for continued access along the cable corridor. The Applicant confirmed [REP4-074], that an additional trenchless crossing would result in additional traffic movements from Kent Street and addition of noise during the 24-hour working required which would require further mitigation. In addition, there would be additional temporary land take for the trenchless crossing beyond that identified with the landowner to date. While minor benefits would be apparent from an ecological and landscape and visual perspective, when considered alongside the additional construction costs of approximately £600,000 the Applicant considered this not to be proportionate given the significance of the features described above and that some loss would still occur even with the trenchless crossing. For these reasons, the Applicant confirmed there would be no change to the design and reconfirmed the embedded environmental mitigation measure of a reduced maximum 14m loss would be provided.
- 3.12.116. Ms Creaye submitted additional evidence into the Examination at Deadline 5 on this issue in the form of an assessment on the 'green lane' from Arborweald [REP5-163] which provided comment on the ecological value of the trees being mature oaks including veteran trees that are exhibiting numerous ecological and habitat features, including decay pockets, dysfunctional wood and larger diameter dead wood. The assessment states that whilst the Applicant's assessment classified them as Category A trees, a full assessment of the ecological importance of these trees does not seem to have been included as part of the arboricultural assessment for the site. The report comments on the habitat links and networks, stating they provide a valuable continuous habitat link between both the mature oak trees within 'green lane' and the wider countryside landscape, including the tributary to the north and Woodcock Shaw to the south. It states these links would be significantly compromised if not completely severed if the proposed tree removals take place. The report states the historical significance of the 'green lane' is a historic field boundary shaw feature with map evidence dating back to 1843-1892 and is likely to have been a part of the local farmed landscape for centuries which includes a defined bank and ditch feature that indicates potential historic significance and advises that it should be further explored before elements are removed.
- 3.12.117. West Sussex CC raised concerns regarding the OLEMP and AIA in its representation at Deadline 4 [REP4-086]. The Applicant responded to these concerns at Deadline 5 [REP5-122]. West Sussex CC commented at Deadline 5 [REP5-134] that changes made to the AIA [REP4-038] updated at Deadline 5 [REP5-058] were welcome, particularly further clarity on buffer zones of veteran and trees approaching veteran status and a review of arboricultural features at access points. In addition, changes reflect the retention of two high quality trees T1236 and T1273 which West Sussex CC had previously requested.

- 3.12.118. At Deadline 6 West Sussex CC commented in its Closing Position Statement [REP6-280] that the Proposed Development would impact upon trees, hedgerows and woodlands through their removal to facilitate the various construction components. West Sussex CC stated that the AIA [REP5-058] demonstrated that (other than the location of the proposed substation), arboricultural loss has been minimised proportionately, is considerate of the arboricultural quality of these features and that the loss of Ancient Woodland and veteran trees has been avoided. West Sussex CC stated that provision has been made to appropriately mitigate non-adverse impacts that could occur to such features during construction phases, preventing their deterioration or decline. It stated that further arboricultural surveys are required to inform the detailed designs and control documents, though the tree groups and woodland adversely impacted are not likely to be of significance in relation to the scale of the Proposed Development and treescape.
- 3.12.119. The Applicant confirmed in the OVRP [REP6-269] that losses of scrub are approximately 1ha in extent. The Applicant confirmed OVRP [REP6-269] that grassland losses shown on the Figure 7.2.4 OVRP [REP6-269] are those that have been identified as supporting priority habitat (mainly calcareous grassland or coastal and floodplain grazing marsh). Additionally, two fields identified by a stakeholder at Crateman's Farm as supporting higher quality grassland than identified in the Extended Phase 1 habitat survey [APP-181] have been added to Figure 7.2.4 Vegetation Retention and Removal Plans – Grassland and Table 2-3 [REP6-269], to highlight them for additional scrutiny during the pre-commencement surveys secured via commitment C-294. The total area indicated in Table 2-3 is 3.3ha.
- 3.12.120. The Forestry Commission stated in its RR [RR-123], that while it was concerned by the significant tree and woodland loss associated with the Proposed Development, it recognised that the Applicant had made an effort to explore less damaging options, and welcomed the selection of the preferred route that avoids direct Ancient Woodland loss, over more harmful alternatives, and the efforts for significant compensation measures proposed.
- 3.12.121. The SDNPA [REP6-254] remained in disagreement with the Applicant at the close of the Examination regarding the scope and methodology for assessment of landscape scale effects on terrestrial ecological features. The SDNPA stated [REP6-298] that robust ecological surveys still needed to be carried out to properly inform the impact assessment process, ensure that suitable mitigation and compensation measures could be identified as had been raised in its LIR [REP1-049]. The Applicant responded [REP6-25] that Commitment C-294 in the Commitments Register [REP6-227], committed the Applicant to base detailed design on a full data set gathered post-consent to the latest guidelines. However, the SDNPA also stated in its SoCG at Deadline 6 [REP6-254] that the agreed compensation package in the s106 agreement would help resolve the residual harm to terrestrial ecology character experienced within the NP.

Quality of proposed mitigation, compensation and reinstatement for anticipated vegetation loss

- 3.12.122. The Forestry Commission stated in its RR [RR-123] that it should be consulted at the detailed design stage on mitigation and compensation measures to help ensure that measures are as effective as possible. It stated that compensation measures should be sought that:

- Retain connectivity as far as possible.
- Create compensatory linear habitat in the form of hedgerows and woodland creation.
- Bringing unmanaged woodland along the route into active sustainable management in line with UK Forestry Standard.
- Compensatory planting is implemented as early in the programme as is reasonable to help them establish quicker and to minimise short term impacts.

- 3.12.123. The Forestry Commission commented at Deadline 3 [REP3-103] that residual loss of woodland connectivity should be compensated with significant and targeted habitat creation and enhancement to improve connectivity between new and existing woodland habitat. It stated this could include a variety of measures to provide coordinated and joined up wildlife corridors and stepping stone habitats such as additional native hedgerow creation, bolstering/widening of existing hedgerows, targeted tree planting and enhancement of existing hedgerow enhancement such as through hedge-laying. The Forestry Commission went on to state that for all measures, appropriate management and maintenance would also be required to ensure successful establishment and it requested that the above measures are included within the detailed LEMP and BNG design.
- 3.12.124. West Sussex CC raised in its RR [RR-418] and LIR [REP1-054] concern that successful reinstatement may take considerably longer than the Applicant anticipates, that regular monitoring, combined with rapid remedial measures, would be critical, that the replacement planting proposed within the Applicant's Arboricultural Impact Assessment [APP-194] was not secured within the draft DCO and that the proposed planting strategy should create landscape features rather than meeting planting numbers alone. West Sussex CC also confirmed in its RR [RR-418] that adequate mitigation and compensation strategies to limit impacts to arboricultural features had been proposed by the Applicant where avoidance had not been possible, but it did raise concern over the landscaping proposals for Oakendene due to the impacts on notable trees and hedgerows and that better connectivity between green corridors was expected at the extension proposals at Bolney Substation.
- 3.12.125. Compensation for temporary loss of habitat and landscape features along the cable corridor and at the construction compounds and access routes was a principal area of disagreement for West Sussex CC [AS-008] who maintained that additional compensation, such as restoring hedgerows to a better condition, advance tree planting and other habitat enhancements should be considered along with opportunities for habitat enhancement. West Sussex CC stated concern in its LIR [REP1-054] that successful reinstatement may take considerably longer than the two years the Applicant anticipates and that regular monitoring, combined with rapid remedial measures, would be critical and NE advised [APP-254] that reinstatement should be less than two years for sensitive habitats.
- 3.12.126. The Applicant stated [REP5-122 pE16] it would seek to reinstate as soon as possible following loss, however, stated it is not possible to commit to a six-month period given that a detailed design and associated schedule has not been created. The Applicant also confirmed that Commitment C-103, secured by Requirement 22 of the draft DCO [REP6-007] controls the loss and reinstatement occurring, whilst the OLEMP [REP6-212] recognises that establishment would need to be monitored, managed and remedial actions taken across a ten-year period.

- 3.12.127. The Applicant confirmed [REP1-017] that replacement planting would be detailed within the stage specific LEMP for agreement with the relevant LPA and NE. This is secured through Requirements 12 and 13 of the draft DCO [PEPD-009] updated at Deadline 6 [REP6-007]. In addition, the Applicant confirmed that the delivery of increased connectivity of tree and woodland habitat around the existing National Grid Bolney substation would be dependent on landowner agreement at the detailed design stage.
- 3.12.128. Regarding mitigation for the loss of vegetation and habitat at Oakendene and Bolney substations, the Applicant stated [REP5-058], that mitigation that cannot be delivered in-situ includes the removal of trees, tree groups and hedges. Mitigation for the removal of such trees would be delivered via 'ex-situ' planting. The Applicant set out its approach to mitigation in Section 8 of the AIA [REP5-058] setting out approaches to tree protection, monitoring and compliance and replacement planting. Replacement tree rates are reported in Table 8-1 [REP5-058], and Table 4-1 of the OLEMP [REP6-212], ranging from a ratio of 1:1 for a stem diameter of 100mm to 16:1 for a stem diameter of 1200mm. The Applicant stated [REP5-058] pruning of individual trees would not be offset by new planting and where the extent of any pruning required would significantly reduce tree quality, function or longevity, trees have been shown for removal. Table 8-3 and Table 8-4 [REP5-058] describe the replacement planting that would be provided for tree and hedgerow removal based on the current assessment, which would be refined based on final tree and hedgerow losses in response to detailed design.
- 3.12.129. The Applicant goes on to say [REP5-058] that all trees that are removed would be replaced within or in close proximity to the proposed Order limits, in order to ensure that non-habitat benefits and functions are also reinstated. The Applicant adds that it is likely that sufficient opportunities exist within the proposed Order limits and surrounds to plant the required number of individual tree replacements via a combination of in-situ and ex-situ locations, stating the total number is low, relative to the scale of the scheme and the suitable planting locations opportunities. This would principally be within new or reinstated hedgerow or field margins. The Applicant adds that the replacement of tree groups and woodland would require more land than the existing trees currently occupy, making in-situ delivery impossible and ex-situ more difficult. The Applicant confirms, the total ex-situ liability would be calculated based on the total planting liability minus the in-situ planting. This remaining planting would be delivered according to the following hierarchy, in agreement with the landowner:
- As close as possible within the proposed Order limits on land owned by the same landowner.
 - As close as possible within the proposed Order limits on land owned by an adjacent landowner.
 - On other land within the proposed Order limits.
 - As close as possible outside the proposed Order limits.
 - On other land within the region e.g. Local Planning Authorities or the SDNP.
- 3.12.130. The Applicant stated that [REP5-058], the tree replacement strategy adopted within the Proposed Development is the replacement of the cross-sectional area of stems that are removed, within 30 years and that 30 years has been chosen to align with BNG, and because it represents a reasonable timescale for reinstatement.
- 3.12.131. The Applicant confirmed [REP5-058], hedges would be replaced at a rate of at least 1:1 by length as the vast majority would be replaced in situ as the cable installation

works are completed. The commitment to BNG, Commitment C-104 would result in enhancements or creation of hedgerows elsewhere in the local area.

- 3.12.132. The Applicant continues [REP5-058], that liaison would be undertaken with landowners and other bodies providing units to the BNG market regarding the location of 'ex-situ' planting during detailed planting design. The final specification of tree sizes for planting and maintenance schedules would be produced as part of detailed planting plans.
- 3.12.133. NE's final comments prior to the close of the Examination, at Deadline 6 [REP6-294] stated the majority of habitats temporarily lost to development would not be reinstated at the locations they are lost for up to two years and that reinstatement may not be completed until 3.5 to 4 years on temporary construction compounds, cable joint bays, some haul roads, some construction access roads and the landfall, as stated in Commitment C-103 but confirmed this would be picked up at the detailed design stage.
- 3.12.134. Horsham DC commented in its RR [RR-148] that the proposed replacement planting appears robust and commiserate for the number and size of the trees and groups indicated for removal.
- 3.12.135. The Applicant explained in response to WQ BD 1.7 [REP3-051] that through the commitments and associated descriptions described within the OCoCP [REP6-224], that suitable mitigation would be provided to avoid significant effects on ecological features, and that full compensation for the permanent and temporary loss of habitats would be met through the delivery of the approach to BNG as described in Appendix 22.15: BNG Information of the ES [REP6-204].
- 3.12.136. At the close of the Examination, West Sussex CC stated agreement with the Applicant in its SoCG [REP6-255] on the following and there were no outstanding areas of disagreement related to vegetation loss or reinstatement.
- 3.12.137. Horsham DC had raised concern in its PADS [AS-010] relating to the feasibility of habitat creation at Oakendene substation site and the OLEMP, specifically a request for the Applicant to clarify triggers of Commitment-199 to ensure all new planting would be established within 10 years of completion and managed and maintained for a further 10 years post planting. These were resolved and agreed with the Applicant at the close of the Examination as indicated in its SoCG [REP6-245].
- 3.12.138. There were no outstanding concerns relating to vegetation reinstatement at the close of the Examination from Mid-Sussex DC [REP5-092] or SDNPA [REP6-254].

Construction risks to fauna and flora

- 3.12.139. The main issues arising during the Examination relating to construction risks to fauna and flora were:
- Protected and notable species.
 - Activity within 25m buffer zone for Ancient Woodland.
 - Reliance of trenchless techniques as a mitigation measure for sensitive and irreplaceable habitats, particularly areas of Ancient Woodland at Michelgrove, calcareous grassland at Sullington Hill and Climping Beach SSSI.

- HDD under hedgerows and likely success of hedgerow translocation techniques proposed and techniques such as hedge notching.
- Wintering birds on Climping Beach SSSI.

Protected and notable species

- 3.12.140. CvR cited concerns regarding the quality and timing of surveys for protected and notable species including Red list and UK BAP priority species, particularly in the northern section of the cable route and in the vicinity of the proposed sub-station at Oakendene [REP1-086 to REP1-089, REP2-048 and REP4-105]. Ms Smethurst speaking on behalf of CvR, raised this point at the OFH1 [REP1-032] and within post hearing submissions at Deadline 4 [REP4-106].
- 3.12.141. Concern regarding potential effects on protected and notable species was raised by many individual IPs [RR-164, PEPD-076, REP1-106 and REP1-100 to REP1-114, REP1-132, REP2-056, REP3-112, REP4-112, REP5-163].
- 3.12.142. Ms Creaye's concerns raised throughout the aforementioned representations [REP1-106], state that construction activity in the vicinity of the proposed Oakendene sub-station site and northern sections of the cable route construction areas around Crateman's Farm and Moatfield Farm would significantly adversely impact many species due to destruction and disturbance of habitat in the form of trees, tree lines, hedgerows, scrub, grassland and meadows. Species cited in the representations include nightingale, skylark, grasshoppers, bats, great crested newts, toads, hazel dormouse, badgers, water voles, including notable and protected species and Red list species.
- 3.12.143. CvR [REP1-089], Ms Smethurst [REP1-132] and Ms Creaye [REP1- 106] raised the potential effect on ecology and wildlife of noise from the proposed temporary haul roads to access the proposed cable route.
- 3.12.144. West Sussex CC raised concerns regarding potential effect on legally protected species due to habitat loss and habitat severance and disturbance, including bats, hazel dormouse, water vole, badger, great crested newt and reptiles in its LIR [REP1-054]. Mid Sussex DC concerned with the Bolney sub-station area, cited part of Policy DP38 of the Mid Sussex District Plan in its LIR [REP1-046] that:
- "...appropriate measures should be taken to avoid and reduce disturbance to sensitive habitats and species...and...Minimises habitat and species fragmentation..."*
- 3.12.145. Horsham DC raised concerns in its LIR [REP1-044] regarding the potential for fragmentation of foraging habitat for bats citing high bat activity around Taintfield Wood which has commuting habitat linking to the proposed site. Horsham DC also raised concerns regarding the lack of eDNA surveys for great crested newts in some waterbodies and potential risk to protected species such as hazel dormouse, nightingale (red-listed), song thrush, dunnoek (both UK BAP) and skylark (red-listed and UK BAP) along the cable route particularly towards the Oakendene substation site. Horsham DC raised that the presence of any EPS would require a licence from NE to disturb them or their habitat and that it would be in Horsham DC's interest to receive a copy of all licences issued.
- 3.12.146. In addition, in its LIR [REP1-044] Horsham DC raised the lack of surveys for ecologically sensitive and important habitats undertaken in relation to the proposed construction compound sites, to enable consideration of effects. Horsham DC

requested the Applicant to amend Commitment C-196 within the Commitments Register timely submission and provision of results from pre-construction species surveys, to inform details of the works in advance and consideration of the use of a clerk of works.

- 3.12.147. Arun DC raised a concern in its LIR [REP1-039] relating to the risk to protected species such as dormice and bats from habitat fragmentation and disturbance from noise, vibration and lighting.
- 3.12.148. The quality of the ecological surveys of protected and notable species was examined at ISH1 under agenda item 4 vii [REP1-033], questioned in the ExA WQs [PD-009, TE 1.1, to TE 1.4, TE 1.11, TE 1.14, TE 1.15 and TE 1.17 to TE 1.23], questioned further at ISH2 under agenda item 2d) [EV5-001] and questioned in further from the ExA [PD-012] in WQ TE 2.12, TE 2.13, TE 2.14, TE 2.16 and TE 2.17.
- 3.12.149. The Applicant highlighted [REP3-051], that Commitment C-208 relating to pre-construction surveys for reptiles had been updated at Deadline 1, [REP1-015] to explicitly cover all construction activity including temporary construction compounds, the onshore substation, access works and onshore cable installation, not just that along the onshore cable route. Commitment C-208 is secured through the OCoCP [REP6-224] via Requirement 22 of the draft DCO [REP6-007].
- 3.12.150. Regarding the quality of fauna surveys, the Applicant provided responses to WQ TE 1.1 [PD-009] in [REP3-051], providing information such as the number, types and dates of surveys undertaken, and the level of qualifications and experience of those who undertook the surveys and stating which guidelines were followed.
- 3.12.151. Horsham DC confirmed at Deadline 3 in response to ExA WQ TE1.2 [REP3-069], that it had no remaining concerns relating to quantity or quality of ecological surveys, the extent to which the appropriate guidelines and methodologies have been followed and the conclusions of the ecological assessments, at and in the vicinity of the Oakendene substation site and cable route near to this location.
- 3.12.152. Horsham DC confirmed at Deadline 3 in response to ExA WQ TE1.3 [REP3-069], that it had concerns that there was a lack of survey effort in the temporary construction compound areas, specifically Oakendene West and Washington. They state the reliance on pre-construction surveys to further inform final design and mitigation (Reference 9.9 and 9.10 of Applicant's Response to Horsham DC Deadline 1 Submissions) [REP2-022], opens opportunity for risks. Horsham DC gave an example of if a Bechstein's bat maternity roost was found on one of the proposed compound sites, that this may result in a change of location, requiring future amendments to the DCO. Horsham DC stated there should be a robust process and procedure for undertaking such surveys and reporting the results to NE and LPAs in advance of any pre-commencement works, including site clearance works, via the submission of updated species reports under Requirement of the draft DCO as this would demonstrate the Applicant has demonstrated for opportunity to exist for further specific mitigation to be adopted following pre-construction surveys. Horsham DC conclude [REP3-069] that subject to securing this outcome, it has no remaining concerns with regards to the quality of terrestrial ecological surveys undertaken to date, their concluding assessments, or the extent to which the appropriate guidelines and methodologies have been followed.

- 3.12.153. The Applicant noted [REP4-079] that the reporting of updated survey findings is secured through Requirement 22 of the draft DCO [REP3-003], updated at Deadline 6 [REP6-007]. The Applicant drew particular attention to Requirement 22(4)(a) Arboricultural method statement and tree protection plan, vegetation retention plans specified in Requirement 40 [REP6-007] and Requirement 22(4)(f) biodiversity management plan all of which would require to be informed by the pre-construction survey programme.
- 3.12.154. In response to representations from CvR [REP1-089], Ms Smethurst [REP1-132] and Ms Creaye [REP1-106] regarding the potential effect on ecology and wildlife of noise from the proposed temporary haul roads to access the proposed cable route, Horsham DC confirmed at Deadline 3 in response to the ExA's WQ TE1.13 [REP3-069], that whilst it acknowledged that the temporary haul roads would add increasing levels of noise over a longer period than that of works along the cable route, which is likely to have an effect on many species, it is not likely to cause major disturbance in such a way to compromise local populations' survival. All residual risk of disturbance would be covered under a mitigation licence which would be sought from NE.
- 3.12.155. West Sussex CC confirmed at Deadline 3 [REP3-073] in response to ExA WQ TE 1.14 regarding legally protected species including bats, hazel dormouse, water vole, badger, great crested newt and other reptiles, that it welcomed the revised wording of Commitment C-208 to explicitly include destructive search techniques for reptiles in all areas of suitable habitat affected by construction activities, not just the cable route.
- 3.12.156. NE provided advice into the Examination at Deadline 3 [REP3-084] regarding the following potentially licensable species: great crested newt, otters, water vole, bats, dormouse and badger. NE confirmed that there was insufficient information at this stage to determine whether a protected species licence would be required, or if the proposed design was appropriate. NE encouraged the Applicant to work collaboratively to progress towards letters of no impediment (LONI) wherever possible.
- 3.12.157. At Deadline 5 NE stated [REP5-140], that it could confirm the Applicant was engaging with NE's Wildlife Licensing Service (NEWLS) to pursue LONI for licenses pertaining to hazel dormice and water voles. The issue of protected species licensing was included in NE's SoCG at the close of the Examination, submitted at Deadline 6 [REP6-266]. This outlined the request from NE that the Applicant completed draft protected species licence applications and that the Applicant has agreed to this and has justified why it is doing so for some species and not others.
- 3.12.158. The SoCG with NE [REP6-266] states that the Applicant acknowledged there would remain a residual risk associated with legally protected species during the construction phase and the Applicant noted that there would be flexibility within the draft Order limits to enable any constraints identified through pre-construction surveys to be dealt with such as micro-siting and other measures that could be used should micro-siting not avoid the issue, for example use of a small trenchless crossing beneath a tree supporting a bat roost. The Applicant noted [REP6-266] that most development projects, at a variety of scales, would hold residual risks regarding protected species. It is also acknowledged that the larger the development, the greater the opportunity to encounter these risks and that pre-construction surveys for protected species are secured via commitments C-211 for bats, C-210 for water vole and otter, C-209 for badger, C-214 for great crested

newts secured via Requirement 22 in the draft DCO [REP6-007] and the results would be used to inform detailed design and the implementation of the mitigation hierarchy which is also secured via Commitment C-292, secured via Requirement 22 in the draft DCO [REP6-007].

- 3.12.159. Horsham DC confirmed at Deadline 3 in response to WQ TE1.4 [REP3-069], that Horsham DC does not have concerns regarding the Applicant's surveys undertaken for nightingale and their territories, adding that the Sustainable Drainage Systems (SuDS) and wet woodland proposals for the Oakendene sub-station location would provide good foraging habitat for nightingale, as it would attract invertebrates such as flies and beetles which comprise much of their diet.
- 3.12.160. In response to ExA WQ TE 1.28, West Sussex CC responded [REP3-073] that there are particular ecological sensitivities along the northern end of the cable corridor, such as around Crateman's Farm, including the presence of breeding nightingale which may warrant seasonal restriction of work. i.e. Avoid March-July. West Sussex CC stated that whilst this is already partly addressed by Commitment C-21, which states that vegetation removal would be scheduled over the winter period to avoid the bird breeding season, avoiding or minimising disturbance in these sensitive areas during March-July would be beneficial. West Sussex CC added that works within floodplains should avoid the period October-February inclusive to prevent disturbance to waterfowl. Whilst Commitment C-117 addresses this issue in Flood Zones 2 and 3 it may also be beneficial to apply this measure to flooded grassland along the Cowfold Stream.
- 3.12.161. The Applicant stated [REP3-051] that commitments in place to guard against potential effects on breeding birds include commitment C-21, scheduling of vegetation removal to avoid damage or destruction of active nests and commitment C-207 to employ of an Ecological Clerk of Works. The Applicant stated [REP4-079] that West Sussex CC's suggestion would prohibit works between October and July, leaving only August and September to install the transmission cables. The Applicant stated it does not consider this either reasonable or necessary given the Commitments in place.
- 3.12.162. There were no issues regarding nightingale in NE's Risk and Issue log at the close of the Examination [REP6-296].
- 3.12.163. The Applicant confirmed at Deadline 2 [REP2-022 Ref 9.17] in response to Horsham DC concern re hazel dormouse at the Oakendene substation site in its LIR [REP1-044] over maintenance of connectivity and minimisation of potential disturbance to hazel dormouse, that commitment C-232 ensures further survey would be undertaken pre-construction on all suitable habitat where detailed design highlights losses, to ensure legal compliance, secured through the Requirement 22 of the draft DCO. The Applicant confirmed [REP2-022] that an EPS licence would likely be required at the Oakendene substation site.
- 3.12.164. West Sussex CC confirmed at Deadline 3 [REP3-073] in response to ExA WQ TE 1.10e that it is satisfied with the level of surveys undertaken for hazel dormouse to date and notes that further pre-construction surveys would be undertaken as per Commitment C-232.
- 3.12.165. The SDNPA commented in its Deadline 4 submission [REP4-085] that as per its WR [REP1- 052] and Deadline 3 submission [REP3-071], it considered the baseline is lacking. SDNPA state the Applicant has not evolved its approach with reference

to new records nor has it properly liaised with nature conservation organisations about species status and distribution in this area.

- 3.12.166. NE stated at Deadline 3 [REP3-084] that a single male dormouse was recorded at survey site at the proposed sub-station at Oakendene site 7 in October 2022; therefore, dormouse presence has been confirmed at the Oakendene substation site. However, NE also stated there is a large amount of the Proposed Development area that has not yet been surveyed for dormouse presence, with many of the current survey areas no longer within or adjacent to the proposed Order limits and that overall, NE advised that the current baseline data is insufficient to robustly determine dormouse presence across the whole Proposed Development. NE advised that the proposed dormouse mitigation measures that are mentioned within [APP-063] and [APP-232] need further consideration. NE advised [REP3-084] that there is insufficient detail to provide a full evaluation of proposed mitigation measures for the Proposed Development and due to the change in the Order limits, the locations of surveys are adjusted and updated surveys prior to consent should be carried out.
- 3.12.167. At Deadline 4 the Applicant confirmed [REP4-070] that, a new Commitment (C-299) had been added to the Commitments Register at Deadline 4 [REP4-057] updated at Deadline 6 [REP6-227] detailed in the OCoCP [REP6-224] which is secured through Requirement 22 of the draft DCO which reads:
- “Where dormouse are shown to be present through pre-construction surveys, vegetation will be removed at an appropriate time of year following either a single (vegetation removal in May) or two-phased approach (vegetation mostly removal between November and March with tree/hedgerow bases removed in May). Suitable methods will also be used to ensure vegetation supporting other legally protected species is removed sensitively and in a legally compliant way”.*
- 3.12.168. The Applicant responded to NE’s advice on protected species including hazel dormouse at Deadline 4 [REP4-070] stating that reference J65 in NE’s Risk and Issue log at Deadline 3 [REP3-087] suggest that should hazel dormouse be present along the ‘linear impact route’ (assumed to be the cable corridor) a EPS licence would be required and that as the status for this is ‘green’ the Applicant has assumed that NE consider that, in principle, a EPS licence could be granted.
- 3.12.169. The Applicant presented a comparison of the approach taken for the Proposed Development in regards to surveys for hazel dormouse with that of the Southampton to London Pipeline Projects which was granted development consent in October 2020, [REP4-070]. The Applicant stated that the approach to survey used for the Southampton to London Pipeline Project is akin to that for the Proposed Development, i.e. samples were taken from the areas of habitat considered most likely to support dormouse. The Applicant also notes based on the length of the Southampton to London Pipeline Project, the much greater extent of woodland loss proposed and the greater number of hedgerow crossings for that project it is apparent that the level of survey intensity has been greater for the Proposed Development adding that the approach to survey was agreed as appropriate between NE and the Southampton to London Pipeline Project in a SoCG (ESSO, 2019b).
- 3.12.170. The Applicant confirmed at Deadline 5 [REP5-119] in response to ExA WQ TE 2.12 that discussions with NE took place on 22 May 2024 to discuss draft licences. The Applicant confirmed a draft protected species licence application for hazel

dormouse has been made to NE and that it aims to secure LONI from NE as soon as possible.

- 3.12.171. At Deadline 5 in [REP5-140] NE confirmed that that the Applicant was engaging with NEWLS to pursue LONI for licenses pertaining to Hazel Dormice and whilst none were submitted into the Examination before the close this issue (J61) was marked as unlikely to make a material difference in NE's Risk and Issue log at the close of the Examination [REP6-296]. NE's SoCG at the close of the Examination [REP6-266] categorises this issue as agreed between NE and the Applicant, with both parties recognising the residual risk to obtaining protected species licences at the post-consent stage.
- 3.12.172. The SDNPA stated in its SoCG at Deadline 6 [REP6-254] that it noted the approach to protected species agreed with NE and accepted this resolution although stated in its PADS at Deadline 6 [REP6-298] that although improvements have been made in respect of BNG and protected species, it believed the effects on terrestrial ecology would be greater than concluded by the Applicant.
- 3.12.173. NE stated at Deadline 3 [REP3-084] that it agrees with the Applicant that the survey effort and survey area is appropriate and proportionate for the proposed impacts that could arise and affect badgers. NE agreed that, based on the survey evidence collated and presented to date and considering the environmental measures proposed in the above referenced documents, that overall effect to badgers would likely be low.
- 3.12.174. NE recommended at Deadline 3 [REP3-084] that further surveys are undertaken as appropriate to ensure the most up to date information is available to inform whether sett interference licences are required to facilitate works. At present, NE understands that the Applicant does not intend to apply for a badger mitigation licence. Should further effects be identified likely to require a licence, then further surveys would need to be conducted to support a license application for a mitigation development licence. NE expects up-to-date surveys to be completed within 6 months prior to a licence application being submitted, if a licence is required, and for surveys to be conducted during the winter months when badgers would be more active around setts and vegetation would not hide signs of activity.
- 3.12.175. The Applicant responded to NE's comments at Deadline 4 [REP4-070] stating agreement with NE that based on current knowledge of badger sett locations including their absence at the proposed onshore substation location at Oakendene and the connection point at the existing National Grid Bolney substation, that no badger licence is required. The Applicant stated that Commitment C-209 ensures that a survey would be undertaken prior to construction (see the OCoCP [REP3-025]). This information would be used to inform detailed design. In addition, the Applicant confirms that Commitment C-292 would ensure that the mitigation hierarchy is implemented during the detailed design, meaning that in the first instance any badger setts identified would be avoided if at all possible. Should this not be possible the Applicant confirms that a development licence would be applied for from NE.
- 3.12.176. At Deadline 5 [REP5-140] NE noted the Applicant's decision not to pursue LONI's for these species, but caveats that any residual risks associated with this approach would be borne by the Applicant adding that if at any stage, the Applicant considers a protected species license is necessary for the aforementioned species, they would encourage them to engage with NEWLS as soon as possible.

- 3.12.177. NE stated at Deadline 3 [REP3-084] that detailed comments on mitigation cannot be provided due to insufficient information from the Applicant. As such, NE stated the appointment and role of the Ecological Clerk of Works is therefore important for otter mitigation, particularly as the onshore cabling could result in significant effect for otter if not well designed. This should therefore be committed to by the Applicant in a named plan. NE confirmed more otter surveys are required to inform any licence application at this location given presence has been established. No specific compensation for otters is evident in the documents provided. Compensation may be required as a condition or recommendation of any NE licence granted for otters for this Proposed Development.
- 3.12.178. The Applicant responded to NE's comments in [REP4-070] stating that in NE's Risk and Issues Log Deadline 3 (see J71, [REP3-087]) the status on this issue is provided as 'yellow', although the accompanying text notes that they agree that otters can be scoped out of the ecological impact assessment.
- 3.12.179. The Applicant noted [REP4-070] that NE have requested further information on this assertion from the Applicant that the otter species is not considered to be resident in West Sussex, or present in small numbers only. The Applicant confirms this is based on two surveys. Firstly, the fifth National Otter Survey (EA, 2009) which shows very limited occurrence of otter in Sussex in 2009-10 and none in 2000 – 2002. Secondly observations from Sussex Wildlife Trust including information such as the first individual otter was caught on camera in Sussex in 2016 after an absence of almost five decades (Sussex Wildlife Trust, 2018) and confirmation in 2018 that otter are now present in two catchments (unnamed in the article) in Sussex (Sussex Wildlife Trust, 2018).
- 3.12.180. The Applicant stated [REP4-070] that otter activity was identified at the fishpond at Oakendene Manor only, although many of the watercourses present in the area have the potential to support this species. Given the location of the positively identified sign of activity, it is highly likely that an individual or individuals is present using the Cowfold Stream and associated tributaries and nearby ponds and lakes. The Applicant continues, explaining in detail the approach to mitigation and reinstatement for temporary habitat loss citing relevant Commitments. The Applicant concludes that suitable levels of survey have been carried out to enable otter to have been scoped out of the Ecological Impact Assessment, as corroborated by NE in [REP3-087]. The Applicant stated that there are a range of commitments that are secured via Requirement 22 within the draft DCO [REP3-004] that ensure that should signs of otter be identified prior to construction taking place then a suitable plan could be put in place to avoid any effects. Although the Applicant considers it unlikely to be necessary, an EPS licence application would be made to NE should a location of a place of shelter for otter be identified and could not be retained. There is suitable flexibility within the draft DCO to enable the implementation of necessary mitigation and compensation should it ever be required.
- 3.12.181. The ExA did not consider it necessary to explore matters related to otter further in the Examination given it was considered sufficient information had been provided to reach a judgment.
- 3.12.182. NE stated at Deadline 3 [REP3-084] that clarification was required from the Applicant on the survey distanced used for water vole as there was inconsistency between the ES Appendix 22.11: Badger, otter and water vole survey report [APP-189] and ES Chapter 22: Terrestrial ecology and nature conservation [APP-063]. NE noted that only one survey for water voles has been undertaken, during the

Extended Phase 1 Habitat Survey. NE stated that one survey can be acceptable where the assessment of the effects on water voles can be made on a precautionary basis and the mitigation could be determined on the first visit; or if the habitat suitability and the likelihood of water voles being present are both very low. It is not yet clear from the materials provided which of these circumstances applies. NE requested clarity from the Applicant on this point.

- 3.12.183. NE stated [REP3-084] that the environmental measures to reduce effects on water vole habitats, as described within the ES documents, such as the use of trenchless crossings, appear to be appropriate and proportionate approaches. NE confirmed that a relative population density of water voles has not been provided nor discussed in the documents presented for review and providing such information to would assist NE in assessing any proposed mitigation, should a license be required.
- 3.12.184. The Applicant responded to NE's comments in [REP4-070] stating that in NE's Risk and Issues Log at Deadline 3 [REP3-087 J69 and J70], the status of the survey extent status is categorised as unlikely to make a material difference to NE's advice of the outcome of the decision-making process and describes the need for pre-commencement surveys. The Applicant stated these are already committed to through the Commitment C-210.
- 3.12.185. The Applicant concluded [REP4-070] that suitable levels of surveying has been carried out to enable a robust assessment of water vole to be undertaken and that there are a range of commitments secured via requirements within the draft DCO so that should signs of water vole be identified prior to construction taking place then a suitable plan could be put in place to avoid or minimise any effects. Passive displacement would be scheduled to the most appropriate seasons with works carried out in locations with water vole present either between February and April or between September and October. This would be secured through the necessary development licence. The Applicant confirmed that it is likely that a development licence for water vole would be required for the Proposed Development based on current survey results. The Applicant stated that the level of effect on water vole would be small and rapid and therefore, it is the Applicant's view that the conservation status of the water vole population in the area would not be challenged by the Proposed Development.
- 3.12.186. The Applicant confirmed at Deadline 5 [REP5-119] in response to WQ question TE 2.12 that discussions with NE took place on 22 May 2024 to discuss draft licences. The Applicant confirmed a draft protected species licence application for water vole has been made to NE and that it aims to secure LONI from NE as soon as possible.
- 3.12.187. At Deadline 5 in [REP5-140] NE confirmed that that the Applicant was engaging with NEWLS to pursue LONIs for licenses pertaining to water voles and whilst none were submitted into the Examination before the close, this issue (J61) was marked as unlikely to make a material difference in NE's Risk and Issue log at the close of the Examination [REP6-296]. NE's SoCG at the close of the Examination [REP6-266] categorises the general issue of protected species licences as agreed between NE and the Applicant, with both parties recognising the residual risk to obtaining protected species licences at the post-consent stage.
- 3.12.188. Horsham DC confirmed at Deadline 3 in response to WQ TE1.11 [REP3-069], that the proposed landscaping plan for the Oakendene substation site are viewed as adequate for bats and the hedgerows, woodland and scrub provide good commuting habitat between the Proposed Development and the wider landscape.

Horsham DC stated the wet woodland would also act as an attractant to flying insects, making it a good foraging area for bats. Horsham DC also stated that the commitment to reinstating hedgerows across the cable route would also help to retain important wildlife corridors and commuting routes.

- 3.12.189. However, West Sussex CC confirmed at Deadline 3 [REP3-073] in response to WQ TE 1.11 that the proposed bat mitigation measures were insufficient. West Sussex CC noted that whilst ten bat boxes would be provided at the Oakendene substation, there was no mention of providing any elsewhere. West Sussex CC recommends that bat boxes should be installed close to all locations where mature trees, or trees with bat roost potential, are to be removed. West Sussex CC commented that the new Commitment C-291 to be submitted by the Applicant at Deadline 3 would provide some additional mitigation measures for bats during the construction period through the use of straw bales, dead hedging or willow hurdles to plug temporary gaps in hedgerows. This was welcomed by West Sussex CC.
- 3.12.190. The SDNPA commented in its Deadline 4 submission [REP4-085] that a 14m notched hedgerow becomes in ecological terms a 40m-wide gappy hedgerow where previously there were no gaps and that the measures proposed to mitigate this, plugging gaps with inert material such as straw bales, have not been evidenced as successful for the species of bats potentially affected.
- 3.12.191. NE stated at Deadline 3 [REP3-084] that further surveys may be required prior to consent, as the current baseline data is insufficient in robustly determining full bat community (species present and abundance), and areas of key importance such as those used for roosting. NE highlighted limitations to the commuting and foraging data, as a result of: lack of access, the number of remote devices deployed and absences of recording over core periods (May, June and July) from various locations by the four remote devices. NE confirmed that for bat mitigation licenses identification of the species impacted at species level would be required for them to be included on the licence annex (unless reasonable justification can demonstrate this has not been possible). NE confirmed it would need to be confident that any trees identified for removal, structural changes, fragmentation or subject to disturbance have had the appropriate level of tree specific bat surveys conducted on them.
- 3.12.192. NE confirmed [REP3-084] that disturbance is now a standalone licensable activity, and when combined with direct impacts to a roost, a licence would be required. NE emphasised that every effort should be made to retain connectivity between bat habitats. If linear features used for commuting and foraging are to be lost, measures should be taken to provide viable alternatives, prior to the removal (where possible) of any integral feature/s to ensure habitat functionality. Any removal of trees confirmed as containing a bat roost should be timed in accordance with the roost characterisation. Works to trees identified for hibernation should not be undertaken between November to March. NE would expect to see any roost loss appropriately compensated for, unless deemed low impact due to species, roost type and numbers. Whilst bat boxes may be accepted in some circumstances, depending on roost lost and species identified other compensation features should be considered including translocation/grafting of limbs and veteranisation.
- 3.12.193. The Applicant responded to NE's comments in [REP4-070] stating that in NE's Risk and Issues Log Deadline 3 (see J58 to J60, [REP3-087]) the status is provided as 'green', meaning NE is in broad agreement with the Applicant's approach and has

no outstanding concerns, suggesting that the advice from NE provided in Appendix J [REP3-084] is relevant to the post-consent period.

- 3.12.194. In addition, in [REP4-070] the Applicant provided information on comparison of the approach to bat surveys with a consented NSIP of a linear nature that crossed through the SDNP. Comparisons are made with the Yorkshire Green project (EN020024) which was granted consent by the Secretary of State on 14 March 2024 and the Southampton to London Pipeline Project. The Applicant concludes that it is of the view that suitable levels of survey have been carried out on the basis that a similar approach was deemed acceptable by NE, various local planning authorities and ultimately the Secretary of State with regards the Yorkshire Green project. The Applicant stated it is also notable that the Southampton to London Pipeline project that also crosses the SDNP did not undertake any activity surveys, despite also severing linear features such as hedgerows.
- 3.12.195. The Applicant is of the view that EPS licences for bats may not be required given the opportunity for micro-siting or localised trenchless techniques to avoid individual tree roosts between the landfall location and the substation. The Applicant stated there would be less flexibility with regards loss of trees at the onshore substation at Oakendene, the grid connection at the existing National Grid Bolney substation and at some access locations from the highway. However, should a licence be required the Applicant stated there is the opportunity to provide adequate mitigation / compensation such as the provision of bat boxes. Overall, the Applicant stated [REP4-070] the habitat creation at the onshore substation at Oakendene and the provision of high levels of habitat creation and enhancement associated with the commitment to delivering BNG would provide more extensive habitat for bats than would be lost to the development.
- 3.12.196. The Applicant responded to the WQ TE 2.17 regarding SDNPA concerns regarding the mitigation for 'gappy hedgerows' through plugging gaps with inert material such as straw bales not being evidenced as successful with examples from Anglian Water project which had been monitored and the Applicant stated it has been demonstrated that it was effective, [REP5-119].
- 3.12.197. NE's SoCG at the close of the Examination [REP6-266] categorises the general issue of protected species licences as agreed between NE and the Applicant, with both parties recognising the residual risk to obtaining EPS licences at the post-consent stage.
- 3.12.198. Regarding the SDNPA concern that there has been insufficient surveying of bats in its SoCG at Deadline 6, [REP6-254], it noted the approach agreed with NE and accepted this resolution in response to its concern.
- 3.12.199. Horsham DC confirmed at Deadline 3 in response to the WQ TE1.17 [REP3-069], that Horsham DC do not have any concerns relating to the concluding assessments with regards to common toad, adders, grass snakes and great crested newt in the vicinity of the proposed substation site at Oakendene and cable route leading to this site. Horsham DC states that as per Commitment C-208, pre-construction surveys would be required for reptiles (including adders, grass snakes, slow worm and common lizard) at the proposed substation site at Oakendene to determine distribution. Following this, where necessary, mitigation efforts would involve trapping and translocation to a suitable alternative habitat within the immediate area. Along the cable route an Ecological Clerk of Works would undertake destructive search technique to ensure there is no injury or fatality to reptiles.

Horsham DC stated this is compliant with common practice to ensure there are no offences under the Wildlife and Countryside Act 1981 (as amended), and therefore Horsham DC do not have concerns regarding mitigation to reptiles. As per Commitment C-214, the same approach to the above would be taken for great crested newt. Any removal of suitable commuting habitat would be conducted under a district level licence, and all ponds would be avoided through Commitment C-23.

- 3.12.200. Horsham DC requested the Applicant to provide information on suitable receptor sites for translocated individuals and also on any EPS licences and suitable receptor sites for great crested newt during post-consent discussions.
- 3.12.201. NE stated [REP3-084] that it is understood that the development would be seeking to use the District Level Licensing approach as administered by the NatureSpace partnership. As NatureSpace is an external organisation and separate to NE, it is difficult to provide detailed commentary on this approach other than to recommend that the Applicant engages with NatureSpace as early as possible to secure input and certainty with respect to the efficacy of using the District Licensing Scheme. NE confirmed it cannot comment in detail on the suitability of the survey and proposals as they relate to the NatureSpace District Level Licensing scheme. As the survey effort is deemed insufficient for a GCN EPS Mitigation License at present, NE stated it is unable to comment on the suitability of the conclusions made about the areas in the vicinity of the Oakendene substation site and cable route.
- 3.12.202. NE stated at Deadline 3 [REP3-084] that at present, the quantity or quality of surveys provided would be insufficient to support an application for a GCN EPS Mitigation License. As the survey effort is deemed insufficient for a GCN EPS Mitigation License at present, NE is unable to comment on the suitability of the conclusions made about the areas in the vicinity of the Oakendene substation site and cable route.
- 3.12.203. The Applicant responded at Deadline 4 in [REP4-070] that the outcome of the district level licensing scheme is the provision of strategically located great crested newt habitat within West Sussex that is aimed at securing strongholds for this species. The Applicant asserts that it negates the need for full survey results to inform an application and, in most instance, for certain types of mitigation to be avoided (such as trapping and translocation or use of herptile fencing). In conclusion the Applicant stated sufficient survey effort has been undertaken to inform a district level licence applications. Further pre-construction surveys are also committed to that would help inform both the district level licence and on site mitigation implemented by the Ecological Clerk of Works. The district level licence would provide all necessary compensation and would lead to greater levels of suitable habitat for great crested newt than that being permanently or temporarily lost to the Proposed Development.
- 3.12.204. The Applicant informed NE [REP4-070] that they would use an accredited District Level Licensing scheme from NatureSpace to address any effects on great crested newts. NE confirmed in [REP5-140] that it is content with this approach and confirmed it has no further comments.
- 3.12.205. The ExA did not consider it necessary to examine this issue further given it was considered sufficient information had been provided to reach a judgment.
- 3.12.206. Horsham DC confirmed at Deadline 3 in response to WQ TE1.24 [REP3-069], that the proposed mitigation by the Applicant of ensuring an Ecological Clerk of Works is

present at common toad migration crossings during the construction phase is sufficient to minimise the effects of potential fragmentation of migration routes. West Sussex CC stated at Deadline 3 [REP3-073] that the new Commitment C-296 to protect migrating toads in the Cowfold area was welcome.

- 3.12.207. The Applicant stated in [REP4-070] that it considers that the tests which NE must apply in order to provide EPS licence can be met.
- 3.12.208. At Deadline 5 NE confirmed [REP5-141] that it had no further comments to make on the Applicant's approach to protected species, beyond the engagement that would be made directly with the Applicant on draft licenses to obtain LONI. NE's SoCG at the close of the Examination [REP6-266] categorises the general issue of protected species licences as agreed between NE and the Applicant, with both parties recognising the residual risk to obtaining protected species licences at the post-consent stage.
- 3.12.209. NE confirmed at Deadline 6 [REP6-287] that it accepts the proposed wording from the Applicant in Requirement 44 of the draft DCO at Deadline 5 [REP5-005] updated at Deadline 6 [REP6-007] with regards to the pre-construction requirements for EPS and considers the issue resolved.

Activity within 25m buffer zone for Ancient Woodland

- 3.12.210. The Applicant states in the ES [APP-063] updated at Deadline 6 [REP6-147] and AIA [REP5-058] that there would be no loss of Ancient Woodland arising from the Proposed Development. Within these documents the Applicant stated that the embedded environmental measure Commitment C-216 secured via Requirements 22 and 23 of the draft DCO [REP6-007], means that there would be no construction vehicular access or ground works within Ancient Woodlands. Ground works would be restricted to areas in excess of 25m from the edge of Ancient Woodland, thereby avoiding potential damage to tree roots, changes in local hydrology and providing space to contain any accidental pollutant spillages. The Applicant pointed out [REP5-058] the 25m stand-off is in excess of the 15m minimum recommended by NE and the Forestry Commission given in Standing Advice. Commitment C-126 lists three locations where construction access would be permitted within the 25m buffer zone these being accesses A-42, A-56 and A-57 located in the northern section of the cable route.
- 3.12.211. During the Examination the ExA wanted to understand why there were several locations where the redline DCO boundary directly abutted areas of ancient and semi natural woodland or ancient replanted woodland why land within 25m of Ancient Woodland was required. The ExA questioned this in WQ CR 2.2 and TE 2.21 [PD-012]. The Applicant responded at Deadline 5 [REP5-119] confirming that it had submitted a notification of potential non-material changes to the ExA to reduce the proposed Order limits to ensure that the 25m stand-off from Ancient Woodland is outside of the proposed Order limits. The change request [AS-046] to the DCO application was accepted by the ExA on 24 July 2024 [PD-018]. These changes included minor reductions to the proposed Order limits where adjacent to areas of Ancient Woodland to provide a 25m buffer from these features. Further localised reductions to the extent of Works 9 and 19 were also made, assigning these areas to a class of work with lower impacts from those previously assessed as cable installation. The Applicant stated the changes made result in no new or different effects from those reported in this chapter of the ES, to which the ExA agreed.

- 3.12.212. Regarding the three access locations within 25m of Ancient Woodland, the ExA requested the Applicant to justify the locations and explain what alternatives had been considered in WQ TE2.20 [PD-012]. The Applicant responded at Deadline 5 [REP5-119] providing an explanation for each.
- 3.12.213. The Forestry Commission confirmed [REP3-103] that it welcomed the principle of using a bigger buffer than the minimum quoted in the Standing Advice (25m instead of 15m) but added that it was not clear how this figure has been ascertained and whether this is suitable for avoiding all indirect and direct impacts on Ancient Woodland, in line with the Standing Advice for Ancient Woodland, ancient trees and veteran trees. The Applicant responded [REP4-079] that the commitment to the use of a 25m buffer zone as opposed to the 15m standard is to provide comfort that all indirect effects associated with dust, drainage, light and noise could be managed effectively, confirming that all of these elements could be controlled effectively within the working area.
- 3.12.214. In its final PADS at Deadline 6 [REP6-298], the SNDPA stated there was insufficient evidence to demonstrate that a 25m stand-off and HDD 6m underneath Ancient Woodland ground level, would not cause the loss or deterioration of this irreplaceable habitat.

Reliance of trenchless techniques as a mitigation measure for sensitive and irreplaceable habitats, particularly areas of Ancient Woodland at Michelgrove Park and Calcot Wood, calcareous grassland at Sullington Hill and vegetation on Climping Beach SSSI

- 3.12.215. Concern regarding the potential effects from HDD under Ancient Woodland sites particularly at Michelgrove Park and Calcot Wood were raised early on in the Examination by West Sussex CC in its LIR [REP1-054], NE [RR-265 and [REP4-093] and the Forestry Commission [RR-123]. The SDNPA raised concern in its LIR [REP1-049] that the draft DCO did not secure the areas proposed for HDD in the National Park, i.e. Michelgrove Park and Sullington Hill and was therefore considered to be contrary to Policies SD9 and SD11.
- 3.12.216. Of particular concern was the minimum crossing depth stated in Commitment C-216 of at least 6m below ground to avoid root damage. NE's point number 3 in Appendix J4a NE's advice on Terrestrial Ecology [REP4-093], stated that the Applicant has not provided sufficient information to assess whether a trenchless crossing of a depth of at least 6m below ground is sufficient to avoid root damage which was replicated as a concern in the SDNPA PADS [AS-006].
- 3.12.217. The Applicant responded to this concern, and to WQ TE 2.2 on this point, in [REP5-119] stating that information published by the Forestry Commission had been used to demonstrate that 90 to 99% of total tree root length is in the top metre of soil, with only 5% of trees having roots deeper than 2m and none deeper than 3m. Therefore, the Applicant stated that 6m depth is more than adequate to rule out physical damage to roots and that there would be at least 4 or 5m of soil above the drill profile of earth prior to reaching the rooting area. The Applicant asserts this depth makes it highly unlikely that drilling fluid would reach rooting depths. The Applicant then cites another OWF project East Anglia One which undertook an HDD under Miller's Wood, near Ipswich, an area of semi-natural Ancient Woodland, where the CoCP for the construction phase of this Proposed Development states a 'sufficient depth' would be maintained under constraints of all proposed trenchless crossings.

- 3.12.218. The Applicant confirmed [REP5-119] that a meeting with NE was held on 28 June 2024, in which it was confirmed by NE that the justification provided was reasonable basis for the specification of a minimum drill depth of 6m. The Applicant confirms [REP5-119] that the mitigation was discussed with and deemed appropriate by the Forestry Commission in a meeting on 29 April 2022.
- 3.12.219. A further continued concern from NE was reiterated at Deadline 5 [REP5-140] in that as a minimum an HDD risk assessment and feasibility study should be completed and consulted upon with the LPA and relevant IPs prior to commencement of construction and that this should be added as a Requirement secured in the draft DCO. NE stated there remains residual risk that open cut methods could be reconsidered as a DCO variation at a future date. This ongoing concern was highlighted in NE's risk and issue log at Deadline 6 [REP6-296] as outstanding concern. NE stated they recognised there remains a residual risk that open cut methods could be considered as a DCO variation at a future date, should trenchless crossings not be suitable at these ecological sensitive sites.
- 3.12.220. The Applicant confirmed [REP5-058], that there would be no loss of Ancient Woodland arising from the Proposed Development and that the embedded environmental measure Commitment C-216 within the Commitments Register [REP6-227] means that there would be no construction vehicular access or ground works within these Ancient Woodlands, with pedestrian access only required to use monitoring equipment to trace the path of the drill head. Commitment C-216 also means that tunnelling beneath Ancient Woodland is maintained at a depth of at least 6m to avoid root damage and disturbance. The Applicant confirmed [REP5-058],] that a 'no dig' specialist had appraised the trenchless crossing locations and assessed them as suitable, with risks of a fluid breakout being very low and manageable as described in the OCoCP [REP6-224]. The Applicant confirmed that additional precautions may be required to ensure that any possible spillages do not lead to harm to Ancient Woodland. These would be set out within the Arboricultural Method Statement at the detailed design stage.
- 3.12.221. NE's position on HDD was reiterated at Deadline 6 in its PADS summary statement [REP6-295] and SoCGs [REP6-266] as not agreed and having a material impact on the assessment conclusions.
- 3.12.222. The SDNPA confirmed in its final PADS at Deadline 6 [REP6-298] that insufficient evidence had been provided to demonstrate that HDD would not cause significant harm, although the SDNPA acknowledged that it is the Applicant's risk should trenchless crossings not be possible.
- 3.12.223. The Applicant confirmed during ISH2 [REP4-072] that the draft DCO [REP3-003] updated at Deadline 6 [REP6-007] only seeks to consent open cut in the locations specified in the crossing schedule [APP-122]. At Deadline 6 [REP6-274] the Applicant reiterated that trenchless crossings are considered feasible in the locations identified in the crossing schedule [APP-122] but should a trenchless crossing be required in a location where a trenchless crossing is proposed, this would require a variation to the Order on an alternative consent.
- 3.12.224. NE raised concerns regarding the risks of open trenching across Climping Beach SSSI in its Risk and Issues Log point J17 at Deadline 1 [REP1-059a] as did West Sussex CC in its LIR [REP1-054].

- 3.12.225. NE continued to state concerns regarding the possibility of open trenching across Climping Beach SSSI at Deadline 5 [REP5 -141] stating the Applicant should consider micro-siting the cable route so that it avoids crossing the SSSI in the first instance in line with the mitigation hierarchy and would welcome additional wording in a commitment that specifies that the cable landings are actively micro-sighted to avoid passing through the SSSI, in the event that open cut trenching is required should HDD not be feasible. Arun DC raised a concern in its LIR [REP1-039] regarding a lack of an assessment of indirect effects of HDD beneath such as noise and vibration on the presence of rare species.
- 3.12.226. Risks from HDD under Climping Beach SSSI were examined in agenda item 5iii during ISH1 [REP1-033] and ISH2 [REP4-072].
- 3.12.227. NE maintained at Deadline 4 [REP4-093] that there was insufficient information provided by the Applicant to assess whether a minimum depth of 5m for HDD under Climping beach SSSI and other sites such as Sullington Hill LWS, Atherington Beach and Littlehampton Golf Course LWS is sufficient. The Applicant responded at Deadline 5 [REP5-122] to say it has committed to installing the trenchless crossing to a minimum depth of 5m, in Commitment C-278, secured by Requirement 23 and updated Requirement 23 of the draft DCO [REP4-004] at Deadline 4, updated at Deadline 6 [REP6-007] to secure that the construction method statement for Work Nos 6 and 7 include the depth of the HDD. This would require to be approved by the relevant planning authority following consultation with the SNCB and MMO.
- 3.12.228. NE continued to have concerns regarding potential effects to Climping Beach SSSI from frac-out or another form of emergency access being required, stating at Deadline 5 in response to WQ Q2c-1 [REP5 -141] that NE was concerned that the terms used in Commitment C-112 'unless remedial action is required,' and 'predicted' could result in avoidable damage to the SSSI interest features, such as remediation actions for bentonite frac-out. NE advised the Applicant to submit an outline bentonite break out management plan into the Examination, with a final plan being provided post DCO consent and advised that further details could be added to Commitment C-112, to ensure that measures are in place to further avoid effects to the SSSI, if rapid action and access to the SSSI is required.
- 3.12.229. At Deadline 6 NE stated in its Risk and Issue log [REP6-296] that Commitment C-292 and the changes made by the Applicant to Commitment C-112 means NE and the Applicant agree that the mitigation hierarchy should and would be applied at the detailed design stage with avoidance being the first option considered. However, the disagreement regarding the principle of HDD under Climping Beach SSSI remained, also stated in its PADS at Deadline 6 [REP6-295] and Deadline 6 advice on terrestrial ecology [REP6-294] in that NE continued to advise that HDD beneath Climping Beach SSSI should be avoided in the first instance before wholly replying on the embedded mitigation measure of trenchless crossing techniques. This concern formed part of the general concern with HDD under sensitive locations including Sullington Hill in NE's SoCG at Deadline 6 [REP6-266].
- 3.12.230. This concern also remained as a disagreement with the SDNPA at the close of the Examination [REP6-298]. The SDNPA stated that the Applicant should have undertaken further investigation to ensure a route was achievable without causing harm prior to determination, although the SDNPA acknowledged that it is the Applicant's risk should trenchless crossing not be possible. This concern was extended to the Chalk grassland under Sullington Hill.

Wintering birds on Climping Beach SSSI

- 3.12.231. NE raised a concern at the start of the Examination [REP1-059a] that the wintering period during which construction activity for HDD under Climping Beach would be avoided to reduce disturbance to wintering birds, particularly sanderling should include October to March inclusive. West Sussex CC also raised concern in its LIR [REP1-054] regarding potential impacts on wintering birds, including waterfowl which are designated features of nearby SPAs. During the Examination at Deadline, the Applicant updated Commitment C-217 in the Commitments Register [REP4-057] to restrict site preparation works within 150m of the boundary of Climping Beach SSSI and Littlehampton Golf Course and Atherington Beach LWS between October and February. The Applicant then updated this Commitment C-217 further at Deadline 5 [REP5-086] to extend the winter period through March aligned with NE's advice, resolving this issue, confirmed in NE's Deadline 6 advice on terrestrial ecology [REP6-294].

HDD under hedgerows and likely success of hedgerow translocation techniques proposed and techniques such as hedge notching

- 3.12.232. The SDNPA raised significant concerns over the likely success of proposed hedge notching in its LIR [REP1-049], stating there was a lack of evidence to demonstrate the efficacy of mitigation measures such as notching of hedgerows and that the examples cited by the Applicant for use of the technique in the Lake District and Norfolk Broads are not likely to have encountered the challenges of dry, free draining chalk soils [AS-006]. West Sussex CC raised similar concerns in its PADS [AS-008] and LIR [REP1-054].
- 3.12.233. NE commented on Commitment C-115 in its RR [RR-265] that in principle NE welcomes the commitment to reduce the loss of hedgerows and tree lines using the notching approach and by limiting the sections of hedgerow removed. But it stated that translocated sections of hedgerow would require significant management and maintenance, at each stage of the process to ensure success. NE stated that while the success rate elsewhere is encouraging, they remain unconvinced of the technique's suitability to the SDNP, partly due to the lack of adequate irrigation. NE advised that more information is needed to be convinced of the efficacy of this approach when applied to the SDNP.
- 3.12.234. The Applicant provided a detailed response at Deadline 1 REP1-017], citing the reasons it believed hedge notching and translocation would be successful for the Proposed Development
- 3.12.235. In response to the WQ TE 1.31 regarding the Applicant's approach to hedge notching, the Forestry Commission stated [REP3-103] that it had no comments regarding hedge notching at this time except that it supports the practice in principle and that it should be accompanied by suitable monitoring and restocking to ensure measures are achieved in practice.
- 3.12.236. At Deadline 4 West Sussex CC stated [REP4-086] it remained concerned with the lack of detail for the implementation, maintenance and aftercare of notched hedgerows. However, at Deadline 6, West Sussex CC SoCG [REP6-255] reflected that there was agreement with the Applicant on risks of the failure of hedge notching following revisions to the OLEMP at Deadline 5 [REP5-072] updated at Deadline 6 [REP6-212] and the revised wording of Requirement 14 for BNG put forward by the Applicant at Deadline 5.

- 3.12.237. There were no outstanding issues related to hedgerow notching in NE's Risk and Issue log at Deadline 6 [REP6-296], PADS at Deadline 6 or advice on terrestrial ecology at Deadline 6
- 3.12.238. The SDNPA's Deadline 6 final PADS [REP6-298] stated that the SDNPA were still not satisfied that the proposed hedge notching would be successful requesting 6m notching for all hedges, and further evidence on achievability on shallow chalk soils in Southern England.

Biodiversity net gain

- 3.12.239. The Applicant's initial BNG information in Appendix 22.15 to the ES [APP-193] generated a large number of concerns and questions from the local authorities and NE. The Applicant provided an updated Appendix 22.15 to the ES at Deadline 3 [REP3-019]. NE provided advice into the Examination on BNG at Deadline 4 [REP4-094] and the Applicant provided a further updated Appendix 22.15 to the ES at Deadline 5 [REP5-056] and again at Deadline 6 [REP6-204].
- 3.12.240. Biodiversity issues were examined extensively through WQs [PD-009, BD 1.1 to BD 1.9] and [PD-012], BNG 2.1 to 2.10] covering the Applicant's calculations, the mitigation hierarchy, plans for on-site and off-site delivery of BNG, alignment with local plans, policies and strategies for BNG, differentiation between delivery of compensation and enhancement along with timing of delivery. Responses from the Applicant were provided in [REP3-051].

The main issues arising during the Examination relating to BNG were:

- Distinction between compensation and enhancement elements of BNG.
- BNG calculations.
- Adherence to the mitigation hierarchy.
- Proposed compensation areas for biodiversity loss.
- Quality of BNG surveys.
- Securing BNG.

Distinction between compensation and enhancement elements of BNG

- 3.12.241. Concern was raised by SDNPA [REP1-049], Sussex Wildlife Trust [RR-381], Horsham DC [REP1-044] and NE [RR-265] regarding the transparency between delivery of compensation for the Proposed Development i.e. no net loss of biodiversity and biodiversity enhancement of 10% i.e. 10% BNG.
- 3.12.242. In response to WQ BD 1.7 [REP3-051] the Applicant stated that the Statutory Biodiversity Metric calculates the predicted biodiversity losses, and then values elements for delivery of both compensation and enhancement, giving the number of biodiversity units to reach a position of no net loss (i.e. compensation) and the number of biodiversity units to reach a BNG of at least 10% (i.e. enhancement).
- 3.12.243. The Applicant explained in the BNG Appendix 22.15 to the ES [APP-193] updated at Deadline 6 [REP6-204] that there would be a net loss to biodiversity as a result of the Proposed Development without the delivery of additional off-site biodiversity units. This loss would be driven predominantly by permanent habitat loss at the onshore substation site and the connection at the existing National Grid Bolney substation and the reduction in biodiversity caused by the risk multipliers assigned to the reinstatement works that are aiming to deliver the same habitat type at the same condition as in the current baseline for the majority of situations.

- 3.12.244. The Applicant specified [REP6-204] that Commitment C-104 in the Commitments Register [REP6-227] secured by Requirement 14 in the draft DCO [REP6-007] means compensation for 70% of the net loss deficit would be secured prior to commencement of construction based on the realistic worst-case scenario used to inform the assessment of terrestrial ecology in the ES and that this is likely to be an over-estimation of the losses.
- 3.12.245. In response to WQ BD 1.7 [REP3-015], the Applicant explained that a figure of 70% of the deficit had been chosen as it allows scope for areas within the proposed construction area to be enhanced for BNG should successful discussions with landowners be concluded. The Applicant continued, that should 100% of the BNG commitment be secured (i.e. registered with NE) prior to construction then sites subject to construction could not be included as it would not be possible to register these with NE until such time as habitat creation or enhancement measures were deliverable.
- 3.12.246. The Applicant stated [REP6-204] that the mitigation hierarchy would be implemented throughout detailed design to limit losses through avoidance and minimisation measures and that the biodiversity gain hierarchy would be applied during design of the infrastructure and design and delivery of the reinstatement, starting with on-site habitat creation and enhancements and then finally in the provision of off-site units to satisfy any shortfall.
- 3.12.247. The Applicant articulated [REP6-204] that it has committed to 10% BNG net gain for the Proposed Development through Commitment C-104 in the Commitments Register [REP6-227] secured by Requirement 14 in the draft DCO [REP6-007].
- 3.12.248. The Applicant explained [REP6-204] that gains in biodiversity units would be delivered pre-commencement of construction both through advanced planting at the Oakendene substation location and through the advanced securing of biodiversity units and that once the biodiversity gain information has been formally agreed, the biodiversity units to fulfil the 70% front loaded portion would then be purchased and proof of transaction provided to the relevant local authorities. These biodiversity units would be entered on to NE's biodiversity gain site register and assigned to the Proposed Development. The Applicant also stated that a more accurate estimation of the number of off-site units that would need to be delivered to ensure the commitment of delivering at least 10% BNG is met would occur at the detailed design stage.
- 3.12.249. The ExA did not consider it necessary to explore the matter further in the Examination given it was considered sufficient information had been provided to reach a judgment.

BNG calculations

- 3.12.250. Arun DC [REP4-101] and Horsham DC [REP4-084] recommended that the BNG information was presented on a local authority basis at the district level. NE also stated in its Deadline 4 Submission [REP4-094], that it would be clearer to display the SNDP as an entirely separate set of habitats to be retained, reinstated and permanently lost rather than having some losses displayed twice to prevent any potential double counting of units in calculations. NE advised that baseline habitat units and status should be displayed separately for Arun District, Horsham District, Mid-Sussex District and the SNDP.

The Applicant responded with updated BNG calculations presented by local authority area with the SDNP separated, using the statutory metric and provided the workbooks, Table 4-1 and Table 4-2 at Deadline 5 [REP5-056] updated at Deadline 6 [REP6-204]. The number of units required for compensation to achieve no net loss and units required to achieve 10% net gain are shown in Table 4-5 of [REP6-204].

- 3.12.251. The Applicant confirmed [REP3-051] that Requirement 14 of the draft DCO [REP2-002] updated at Deadline 6 [REP6-007] requires stage specific BNG strategies that require approval from the relevant planning authority in consultation with NE. The Applicant confirmed it would therefore expect to deliver BNG within the area from which it is lost in order to reach agreement. However, the Applicant stated it is recognised that should there be either a particular need to meet trading rules surrounding the Statutory Biodiversity Metric or the local market cannot provide enough units, then alternatives would need to be considered. On the basis of current information, the Applicant stated it is expected that suitable biodiversity units would be available in each LPA's boundary.
- 3.12.252. The SDNPA comment in its Deadline 4 submission [REP4-085] that the Applicant has not broken the calculations down into habitat parcels or highlighted those areas of discrete high/very high distinctiveness and has instead conflated them into overall habitat areas within the Metric. The SDNPA stated it believed this means that some habitats within the SDNP may have erroneously been accounted as temporary loss, reducing the necessity for compensation and enhancement. The SDNPA requested a more granular approach to be taken to recording the habitat parcels in the SDNP as an example of where it could be more clearly demonstrated what the likely effects of the Proposed Development are on the ecological features of the SDNP in the context of its elevated status.
- 3.12.253. The Applicant stated [REP4-079] that this has not been provided for two reasons:
- Firstly, the length of the onshore cable route and number of polygons are significantly in excess of what the Statutory Biodiversity Metric workbook could accommodate (i.e. it has a limit on the number of rows available).
 - Secondly, because this level of detail outside of detailed design does not provide any additional information that is of benefit in informing outcomes.
- 3.12.254. The Applicant added that the Vegetation Retention Plans in the OCoCP [REP3-025] updated at Deadline 6 [REP6-224] show what is proposed to occur at the habitats of greatest interest. The Applicant went on to state [REP4-079] that it was not possible to break down the analysis to show what is contributing to no net loss and what is contributing to net gain at this stage, as everything is contributing to no net loss as there is still a recognised deficit to reach both no net loss and BNG.
- 3.12.255. Horsham DC confirmed of acceptance of the calculations of BNG units at Deadline 6 [REP6-245], stating it understood that finalised and detailed metrics would be submitted for review at the specific stages. West Sussex CC also confirmed of acceptance of the approach to BNG at Deadline 6 in its Closing Position Statement [REP6-280].

Adherence to the mitigation hierarchy

- 3.12.256. NE highlighted [REP4-094], that the Applicant's BNG Appendix 22.15 [APP-193] updated at Deadline 6 [REP6-204] did not refer to adhering to the mitigation hierarchy at the detailed design phase. NE recommend that the BNG Appendix

should make it clear whether the mitigation hierarchy would be followed throughout detailed design stage to avoid biodiversity loss in the first instance. The SDNPA also considered that the mitigation hierarchy had not been adequately followed in response to WQ BD 1.2 [REP4-085].

3.12.257. The Applicant responded at Deadline 5 [REP5-119] stating that the Applicant has committed to the mitigation hierarchy during the detail design stage through Commitment C-292 in the Commitments Register [REP4-057] updated at Deadline 6 [REP6-227]. For clarity, the Applicant confirmed it updated Appendix 22.15 at Deadline 5 [REP5-056] updated at Deadline 6 [REP6-204] to directly reference the implementation of the mitigation hierarchy, through Commitment C-292 implemented via Requirement 14 of the draft DCO [REP4-004] updated at Deadline 6 [REP6-007].

3.12.258. In addition, the Applicant stated [REP5-119] that a meeting with NE on 28 June 2024 confirmed the BNG plan at this stage was acceptable to NE.

Proposed compensation areas for biodiversity loss

3.12.259. At Deadline 4 the SDNPA stated concern over the mechanisms to secure the location and type of delivery within the National Park to provide a betterment on the existing baseline [REP4-085]. It considered that there is a risk that there is nothing to prevent the remaining 30%, or any element of the on-site reinstatement measures that are not wholly successful, may have to be provided off-site outside the National Park boundary which would not demonstrate that the natural beauty and wildlife of the National Park are being conserved and enhanced through the Proposed Development.

3.12.260. The Applicant responded [REP4-079] to state that Requirement 14 of the draft DCO [REP3-003] updated at Deadline 6 [REP6-007] means that each stage specific BNG strategy requires agreement with the relevant planning authority. Therefore, the location and types of biodiversity units that are to be purchased for stages within the SDNP would need to be discussed and agreed as appropriate with the SDNPA including both front loaded elements and any residual biodiversity units required following delivery. The Applicant is of the opinion that this provides adequate control by the SDNPA to ensure appropriate local provision is made.

3.12.261. In response to Examination on whether the Applicant planned to compensate for net biodiversity loss experienced within each local authority area with compensation also located within each local authority area in WQ BD 1.9, the Applicant confirmed [REP3-051] it would expect to deliver BNG within the area from which it is lost. However, it is recognised that should there be either a particular need to meet trading rules surrounding the Statutory Biodiversity Metric or the local market could provide enough units, then alternatives would need to be considered. On the basis of current information, the Applicant expects that suitable biodiversity units would be available in each LPA's boundary.

3.12.262. The Applicant explains in Paragraph 5.3.6 p46 [REP6-204] the prioritisation exercise with units being favoured subject to reasonable cost consideration and type of unit needed to satisfy metric trading rules, in the following order:

- Within the proposed Order limits or within 2km of them on land owned / managed by affected parties.

- Within 2km of the proposed Order limits on land owned / managed by those not directly affected by permanent or temporary land take due to the Proposed Development.
- Within the River Arun Lower or Adur Upper Operational Catchments.
- Within the National Character Areas (NCAs) of South Coast Plain, South Downs or Low Weald when in West Sussex.
- Within other NCAs in West Sussex.

3.12.263. The Applicant confirmed [REP6-204] that based on current understanding, it was likely that all required biodiversity units could be delivered within the first two bullet points.

3.12.264. In response to WQ BD 1.3 [PD-009] the Applicant explained in [REP3-051] that it was in discussions with landowners who had expressed interest in delivering BNG. The Applicant confirmed it had met with the local authorities and the EA on the 18 March 2024 to discuss the approach to BNG. In these discussions, other strategic schemes were discussed including Wilder Horsham and the Weald to Waves Project. The Applicant stated it is not currently proposing to secure options for the delivery of biodiversity units prior to consent but is actively engaged in understanding the options currently available.

3.12.265. The Applicant confirmed [REP3-051] it would seek to secure off-site delivery of BNG through a third party [APP-193] updated at Deadline 6 [REP6-204]. The Applicant would engage in the activity of identifying available biodiversity units during the detailed design phase of the Proposed Development. These units would be provided either by an engaged landowner or a third party (such as a habitat bank or a strategic scheme). Where engagement is directly with a landowner, a third party such as a habitat bank or land agent would be used to secure and register the units with NE and ensure that the appropriate management and monitoring then takes place over the course of the 30-year term.

3.12.266. The Applicant confirmed [REP3-051] that through the engagement of a specialist third party, the Applicant and later the Offshore Transmission Owner (OFTO) would not need to be engaged directly in the monitoring and management of BNG. This ensures that appropriate specialists are in place to manage the delivery of BNG.

3.12.267. The ExA did not consider it necessary to explore the matter further in the Examination given it was considered sufficient information had been provided to reach a judgment.

Securing BNG

3.12.268. There were concerns from local authorities, particularly West Sussex CC [REP3-073] and SDNPA [REP3-071] regarding the wording of Requirement 14 to secure BNG. This was explored in WQ [PD-009, DCO 1.19] and further at ISH2 during agenda item 2a) [REP4-072]. Requirement 14 remained unaltered in the subsequent draft DCO at Deadline 4 [REP4-004].

3.12.269. The ExA proposed changes to the wording of Requirement 14 in its schedule of proposed changes to the draft DCO [PD-013]. The Applicant responded at Deadline 5 [REP5-121] stating that it noted the ExA's concerns around BNG delivery and included amended wording in the draft DCO submitted at Deadline 5 [REP5-005] updated at Deadline 6 [REP6-007].

- 3.12.270. West Sussex CC confirmed at Deadline 6 in its SoCG [REP6-255] that revised wording of Requirement 14 put forward by the Applicant at Deadline 5 was acceptable and the matter was agreed.
- 3.12.271. The SoCG with the SDNPA at Deadline 6 [REP6-254] indicated agreement in this issue with and no material impact for the issue regarding delivery of BNG in the National Park.
- 3.12.272. There were no outstanding issues relating to BNG in the following final PADS and SoCGs from:
- West Sussex CC [REP6-282] and [REP6-281].
 - Arun DC [REP6-276] and [REP5-090].
 - NE [REP6-295] and [REP6-266].
 - Horsham DC [REP6-245].

Other matters

- 3.12.273. SDNPA requested at ISH2 [REP4-072] that the Applicant produce an outline Biodiversity Management Plan. The Applicant responded at Deadline 4 [REP4-074] explaining why it did not agree to this request. The SDNPA responded in its Closing Statement at Deadline 6 [REP6-300] that it was disappointed that an outline Biodiversity Management Plan had not been provided. Whilst it is acknowledged that stage-specific plans would be provided as part of the stage-specific CoCPs, an outline Biodiversity Management Plan would have provided an opportunity to identify any strategic constraints and opportunities as well as pinpointing areas that have not yet been surveyed.
- 3.12.274. The SDNPA requested [REP4-085] condition assessment sheets for each area of habitat within the onshore part of the proposed Order limits.
- 3.12.275. The Applicant responded [REP5-119] stating that it was not possible to deliver habitat condition assessment within the form that is now taken within the Statutory Biodiversity Metric as the surveys began in 2020 when the version of the metric in use was 2.0 (and subsequently evolved through 3.1, 3.2, and 4.0). The Applicant confirmed [REP5-119], that Commitment C-294 in the Commitments Register [REP4-057] updated at Deadline 6 [REP6-227] would mean that an up-to-date habitat survey using the habitat condition assessment associated with the Statutory Biodiversity Metric would be used to inform both detailed design and the associated updates to the BNG calculations. The Applicant confirmed it has provided calculations that ensure a good understanding of the type of units lost and the size of the shortfall, which provides the necessary information to determine the likelihood of delivery of BNG within each relevant LPA. The Applicant considers it would be unreasonable to repeat habitat survey with each update of the Statutory Biodiversity Metric.
- 3.12.276. The SDNPA stated in its Closing Statement at Deadline 6 [REP6-300] that the late submission of much of the information relating to BNG had hindered its ability to be more proactive on specific mitigation opportunities and that the continued lack of provision of 'Condition Assessments' was frustrating, particularly when commitment C-294 would require the following of the statutory BNG Metric for which the Condition surveys are a component part and any assessment should also include rivers and streams, for which no detail has yet been provided.

- 3.12.277. The RR from Ms Crosley [RR-163] stated that she was worried about the effect on the 3.5 trillion insects that migrate across and back from the south coast each year at a height of 150 to 1500m, with the proposed wind turbines up to 325m high. Ms Crosley also set out that insects are at the bottom of the food chain, therefore all living creatures would be affected by this loss. Furthermore, Ms Crosley stated that research shows dead insects stick to turbine blades affecting the efficiency of output.
- 3.12.278. Ms Marogna [RR-110] stated that insects are the foundation to our entire world of living things and raised the concern that the effect on insects is lacking in the ES. According to Ms Marogna, these insects are pollinators, and some are rare migrating butterflies. Ms Marogna explained that disruption to these species could cause 'The Butterfly Effect', as loss of one species could damage an entire ecosystem.
- 3.12.279. The concerns relating to WTGs impact to migratory insects was also reflected in many other RR submissions, including [RR-029], [RR-176] and [RR-338], among others.
- 3.12.280. NE advised [REP2-040], that its remit primarily relates to the impacts of developments on protected sites, habitats and species and as NE does not foresee impacts on these receptors as a result of migratory insect fatalities, it did not raise this as a concern in the RRs.
- 3.12.281. The Applicant responded to the issue of WTG effect on migratory insects [REP1-017]. The Applicant stated that migrating insects were not assessed as they were not raised in the Inspectorate's Scoping Opinion [APP-125] and the NPS for Renewable Energy Infrastructure (EN-3) (2023) is silent on the matter, although it specifically mentions collision risks associated with birds and marine mammals. The Applicant added that further recent reviews of potential ecological effects of offshore wind farms have not identified insect collision as a risk.
- 3.12.282. West Sussex CC's PADS at the close of the Examination submitted at Deadline 6 [REP6-281] did not list any issues regarding terrestrial ecology or biodiversity as an outstanding principal concern.
- 3.12.283. The Applicant addressed all other matters raised in relation to biodiversity and terrestrial ecology at the various Examination deadlines.

ExA Findings

- 3.12.284. The ExA has considered the effects of the Proposed Development on terrestrial ecology and nature conservation in the context of the policy framework set by the Overarching National Policy Statement for Energy (NPS EN-1 2011 and 2024), the National Policy Statement for Renewable Energy Infrastructure (NPS EN-3 2011 and 2024).
- 3.12.285. In terms of the assessment of terrestrial ecology and nature conservation, NPS EN-1 2011 policy requires that the Applicant:
- Sets out clearly any effects on internationally, nationally and locally designated sites of ecological or geological importance, on protected species and on habitats and other species identified as being principal importance for the conservation of habitats.

- Demonstrates how the project has taken advantage of opportunities to conserve and enhance biodiversity conservation interests.
- Aims to avoid significant harm to biodiversity, including through mitigation, consideration of reasonable alternatives and where necessary, appropriate compensation measures.
- Sets out proposals for the conservation of Ancient Woodland and aged or 'veteran' trees or justifies their loss where it is unavoidable.
- Demonstrates that, during construction and operation, best practice will be followed and appropriate mitigation measures included to minimise the effects of construction and operation on biodiversity features, including restoration and where possible enhancement of existing habitats.

3.12.286. NPS EN-1 2024 replicates NPS EN-1 2011 in many of its points relating to terrestrial ecology and nature conservation and includes some additional policies where Applicants should:

- Seek opportunities to contribute to and enhance the natural environment by providing net gains for biodiversity, and the wider environment where possible.
- Use the latest version of the biodiversity metric to calculate their biodiversity baseline and present planned BNG outcomes. This calculation data should be presented in full as part of the application. Where possible, this data should be shared, alongside a completed biodiversity metric calculation, with the Local Authority and NE for discussion at the pre-application stage.
- Apply BNG after compliance with the mitigation hierarchy.
- Set out details of any off-site delivery of BNG within the application for development consent, in a manner that best contributes to the achievement of relevant wider strategic outcomes. Reference should be made to relevant national or local plans and strategies, to inform off-site BNG delivery.
- Consider if in addition to delivering BNG, developments may also deliver wider environmental gains and benefits to communities relevant to the local area.
- Submit a statement demonstrating how opportunities for delivering wider environmental net gains have been considered, and where appropriate, incorporated into proposals.
- Consider wider ecosystem services and benefits of natural capital when designing enhancement measures and embed opportunities for nature inclusive design seeking opportunities to deliver benefits and enhancements beyond BNG.
- Include measures to mitigate fully the direct and indirect effects of development on Ancient Woodland, ancient and veteran trees or other irreplaceable habitats during both construction and operational phases.
- Consider any reasonable opportunities to maximise the restoration, creation, and enhancement of wider biodiversity, and the protection and restoration of the ability of habitats to store or sequester carbon.
- Comply with mitigations required as a result of legal protection of habitats or species and consider that where habitat creation is required as mitigation, compensation, or enhancement, the location and quality will be of key importance.
- Produce and implement a Biodiversity Management Strategy as part of their development proposals.

3.12.287. In reaching a decision NPS EN-1 2011 policy requires that the Secretary of State should take into account:

- The benefits of nationally significant low carbon energy infrastructure development which may outweigh harm to biodiversity and geological conservation interests.
- Whether the Proposed Development avoids significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives, or provides appropriate compensation measures.
- Whether a Proposed Development on land within or outside an SSSI is likely to have an adverse effect on an SSSI either individually or in combination with other developments. In this circumstance, development consent should not normally be granted.
- Give due consideration to sites of regional and local biodiversity and geological interest but designations should not be used in themselves to refuse development consent.
- Whether wildlife species receiving statutory protection are protected from the adverse effects of development and should refuse consent where harm to the habitats or species and their habitats would result, unless the benefits (including need) of the development outweigh that harm. In this context the Secretary of State should give substantial weight to any such harm to the detriment of biodiversity features of national or regional importance which it considers may result from a Proposed Development.
- Mitigation measures that may have been agreed between the applicant and NE and whether NE has granted or refused or intends to grant or refuse, any relevant licences, including protected species mitigation licences.

3.12.288. In reaching a decision, NPS EN-1 2024 policy requires that the Secretary of State should also take into account:

- That although achieving BNG is not currently an obligation on applicants, Schedule 15 of the Environment Act 2021 contains provisions which, when commenced, mean the Secretary of State may not grant an application for a DCO unless satisfied that a biodiversity gain objective is met in relation to the onshore development in England to which the application relates.
- Whether development is in line with the mitigation hierarchy. Where significant harm cannot be avoided, impacts should be mitigated and as a last resort, appropriate compensation measures should be sought.
- If significant harm to biodiversity resulting from a development cannot be avoided (for example through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then the Secretary of State will give significant weight to any residual harm.
- What appropriate requirements should be attached to any consent and/or in any planning obligations entered into, in order to ensure that any mitigation or BNG measures, if offered, are delivered and maintained. Any habitat creation or enhancement delivered including linkages with existing habitats for compensation or BNG should generally be maintained for a minimum period of 30 years, or for the lifetime of the project, if longer.
- Whether development would result in the loss or deterioration of any irreplaceable habitats, including Ancient Woodland, and ancient and veteran trees. The Secretary of State should not grant development consent unless there are wholly exceptional reasons and a suitable compensation strategy exists.
- Whether there would be harm to a protected species and relevant habitat. If there would be, the Secretary of State should refuse consent, unless there is an overriding public interest and the other relevant legal tests are met. In this context the Secretary of State should give substantial weight to any such harm

to the detriment of biodiversity features of national or regional importance or the climate resilience and the capacity of habitats to store carbon, which they consider may result from a Proposed Development.

- 3.12.289. NPS EN-3 2011 and 2024 relate principally to offshore ecology and biodiversity deferring to NPS EN-1 2011 and 2024 in all other respects.
- 3.12.290. The Environment Act 2021 includes provision (in Section 99 and Schedule 15) for NSIPs to be required to demonstrate BNG. These provisions have not yet been brought into effect, however as a statement of Government intent they are important and relevant considerations for the purposes of this Recommendation.
- 3.12.291. The Applicant identifies legislation and policy that it considers to be important and relevant to this topic in ES Chapter 22 [APP-063] updated at Deadline 6 [REP6-149] Table 22-1, Table 22-2 and Table 22-3. Appendix 22.1 of the ES [APP-179] provides the local adopted and emerging planning policy relevant to the assessment of the LSE on ecological features.
- 3.12.292. The LIRs from West Sussex CC [REP1-054], Horsham DC [REP1-044], Mid Sussex DC [REP1-046], the SDNPA [REP1-049] identify the local planning policies that the local authorities consider may be important and relevant considerations in relation to effects of the Proposed Development on terrestrial ecology and nature conservation.
- 3.12.293. The matters discussed below relate to EIA process and the EIA-based conclusions drawn by the Applicant. HRA related matters are presented in Chapter 4 of this Recommendation.
- 3.12.294. The ExA notes that the Applicant has checked the consistency of information on vegetation loss and retention between various document submitted into the Examination as requested by the ExA and acknowledges the corrections that have been made to the specific examples identified. The ExA is reassured that the Applicant has confirmed that the worst-case had been presented in the ES and that the Commitments Register [REP6-227] has been amended to state that in the event that there is an inconsistency in the detail provided in the Application Documents, the least environmentally damaging scenario shall prevail.
- 3.12.295. The ExA acknowledges that the permanent vegetation loss of Category A and B trees and mature hedgerow from the Oakendene site of the proposed substation is not insignificant and that it is likely to take some time for replacement vegetation to reach the maturity, size and characteristics of the existing vegetation. The ExA agrees with the Applicant that the loss of this vegetation is unavoidable at this site to accommodate the size and extent of the proposed substation at Oakendene. The ExA takes the position that there would be a degree of harm at this location. The ExA is satisfied that the extent of vegetation loss has been reasonably minimised and is adequately compensated for through replanting.
- 3.12.296. The ExA notes West Sussex CC, CvR and other IPs ongoing concern that the consideration of effect on arboricultural features was low on the Applicant's agenda when considering suitable substation locations. The ExA acknowledges that the Applicant stated that many factors and constraints played a role in the siting of the location of the substation. The ExA refers to the conclusion of the Alternatives chapter of this Recommendation for the reasoning on the consideration of alternative sites for the substation.

- 3.12.297. The ExA is aware that Horsham DC stated in its Deadline 6 submission [REP6-277] that it found the degree of vegetation loss at the Oakendene site lacked clarity in the information submitted into the Examination by the Applicant. The ExA was also of this opinion at the start of the Examination but has been reassured by the further clarity provided in the OVRP [REP6-269], updates to the AIA [REP5-058] and responses to WQs from the ExA throughout the Examination. The ExA notes that the OCoCP [REP6-224] states the stage specific VRRP for the Oakendene site would need to be approved at the detailed design stage and therefore the LPAs would have control over the detail and format of information provided at that stage. The Recommended DCO proposes amendments to Requirement 8 requiring a site-specific plan for Oakendene which would include landscaping details.
- 3.12.298. The ExA notes that the degree of vegetation loss for the extension of the existing substation at Bolney would amount to less than 1% of tree removals by canopy area with no hedgerow removal [REP5-058]. The ExA also acknowledges the recognition of an error by the Applicant in an earlier version of the AIA [REP4-037] and that the Applicant confirmed the priority habitat deciduous woodland block of concern to West Sussex CC [REP4-086] would be retained.
- 3.12.299. The ExA is also aware of the concern by Ancleggan Ltd regarding the potential effect to the G248 tree group at the site of the Bolney substation extension. The ExA recognises the Applicant's approach to indicate indicative locations for the cable corridor within the Order limits at this stage. The ExA is reassured that the Applicant has committed to the mitigation hierarchy when determining the exact placement of the cable corridor at this location at the detailed design stage, through Commitment C-292 secured by Requirement 22 of the Recommended DCO. The ExA is satisfied that sufficient controls exist within the Recommended DCO to commit the Applicant to fully considering the mitigation hierarchy for most appropriate location for the cable corridor, considering all engineering, feasibility and environmental factors at this location.
- 3.12.300. The Applicant acknowledged the degree of vegetation and habitat loss at the Oakendene and Bolney substation sites within its AIA Rev C [REP5-058] and stated in ISH1 [REP1-033] that the loss at Oakendene was unavoidable due to the scale of the proposed substation at Oakendene. The Applicant has proposed to mitigate and compensate for the loss through replacement planting ex-situ using a range of replacement ratios and implementing a planting hierarchy in agreement with landowners [REP5-058].
- 3.12.301. It is the ExA's view that the degree of the vegetation and habitat loss at the proposed substation locations of Oakendene and Bolney would result in a near-term local adverse impact but is content that this would be adequately addressed by the Applicant through the mitigation and compensation proposed, control measures secured in the Recommended DCO and the delivery of compensation through BNG.
- 3.12.302. The ExA is satisfied that additional scrutiny and surveys committed to by the Applicant in the vicinity of Crateman's Farm and Taintfield Wood at the detailed design stage would address the concerns raised by IPs that in their view, these fields have not been allocated with the correct habitat definition or mitigation. The ExA is content that if the additional surveys of the meadow fields at Crateman's Farm indicate they are of a higher quality than currently listed, that there are sufficient control measures within the Recommended DCO, OVRP [REP6-269] and through Commitment C-294 in the Commitments Register [REP6-227] for the appropriate mitigation to be applied in that circumstance, dependent on the outcome

of the detailed surveys. The ExA is therefore satisfied that effects from the Proposed Development on the grasslands and meadows at Crateman's Farm would be able to be adequately mitigated.

- 3.12.303. The ExA recognises that open trenching in the vicinity of Kitpease Copse and Oliver Copse area of woodland is likely to reduce connectivity between Ancient Woodland areas, particularly as the reinstatement would be of scrub rather than trees to protect the underground cable for the operational lifetime of the Proposed Development. However, the ExA is satisfied that as the water undertaker and environmental regulator for the public water supply in question, have both made a strong case for the open cut method to be applied through Kitpease Copse on the basis of potential risk to public health, this outweighs the harm. The ExA has considered the likely negative environmental effects in this locality in the overall planning balance for terrestrial ecology.
- 3.12.304. The ExA notes West Sussex CC's concerns that the extent of vegetation removal for access points increased throughout the Examination in response to requests for more detail and its concern that vegetation loss may increase again at the detailed design post consent. The ExA notes that Requirement 40 in the Recommended DCO requires the production of stage specific Vegetation Retention and Removal Plans which provides the mechanism for the relevant local planning authorities in consultation with the EA, the SNCB, the highway authority and the LLFA, to agree the extent of vegetation clearance. Requirement 37 in the Recommended DCO would prevent changes to the application at the post-consent stage that results in materially worse environmental effects than reported in the ES. On this basis the ExA is content that the Local Authorities would be able to prevent a worse case than has been assessed in the ES through the powers in the Recommended DCO.
- 3.12.305. The ExA is satisfied that the worst-case impact on hedgerows, woodland, trees, treelines, scrub and grassland as a result of the Proposed Development as a whole has been clearly presented and is understood. The ExA recognises that updates and corrections have been made throughout the Examination in response to questioning, especially where inconsistencies were apparent between documents.
- 3.12.306. The ExA is content with the Applicant's explanation of effects on specific areas of woodland, Category A, B and C trees and certain specific features that were questioned within the Examination.
- 3.12.307. The ExA is reassured that the retention and protection of valuable trees, including Ancient Woodland has been recognised by the Applicant and agrees that it has been reflected in the design of the Proposed Development and use of trenchless crossing techniques. The ExA recognises the various Commitments specified in the Commitments Register [REP6-227] detailing the measures to be implemented to ensure avoidance of veteran trees (C-174) and Ancient Woodland (C-216), minimisation of woodland (C-204) and hedgerow loss (C-115), secured through Requirement 22 of the draft DCO [REP6-007].
- 3.12.308. The ExA concludes that there would be a local adverse effect from the 650m of hedgerow permanently lost, the majority of which (545m) would be at the Oakendene substation location and of which the majority would meet the description of Hedgerow Habitat of Principle Importance. The ExA is content that this loss and local impact would be adequately addressed by the Applicant through the compensation proposed, control measures secured in the Recommended DCO

through Requirement 14, with 70% of the deficit delivered prior to commencement of construction and the delivery of 10% BNG.

- 3.12.309. The ExA notes the concerns from IPs regarding open cut trenching through the 'green lane' feature and the Applicant's response that this feature would not be removed in its entirety, but subject to the loss of up to 14m through one 6m notch and four 2m notches. The ExA notes the Applicant has confirmed that a trenchless crossing under this feature would require a haul road and would have additional landowner impacts and minor negative noise effects from traffic, which the Applicant stated it believes does not warrant the minor terrestrial ecological benefits of a trenchless crossing in this location. The ExA also notes the assessment submitted into the Examination from Arborweald by Ms Creaye at Deadline 5 [REP5-163] providing evidence of the historic and ecological significance of this feature. The ExA notes the Applicant's AIA [REP5-058], showed this feature as hedgerows and standard trees of Category A status but that they are not veteran or ancient and are akin to others that are assumed to be lost in the realistic worst-case scenario. The ExA accepts that there is likely to be some harm to this feature from the Applicant's method of trenching in this area. The ExA is satisfied that if it were to be discovered at the detailed design stage that features in the 'green lane' planned for removal, meet the definition of veteran, then removal of these features would be protected by Commitment C-174 in the Commitments Register [REP6-227] secured by Requirement 22 of the Recommended DCO that commits to protecting veteran trees, and Commitment C-292 that commits to the mitigation hierarchy being applied at the detailed design stage, also secured by Requirement 22, would provide sufficient control measures for this feature.
- 3.12.310. Overall, the ExA takes the position that it is satisfied that the Applicant has provided adequate reasoning and justification for the extent of vegetation loss that would be incurred, that the mitigation hierarchy has been applied and that there are sufficient control mechanisms in the Recommended DCO such that the mitigation hierarchy must continue to be applied post-consent and the 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.
- 3.12.311. The ExA acknowledges that there are no major outstanding concerns with the Applicant's proposals for mitigation and compensation for vegetation loss through in-situ and ex-situ replanting and monitoring and that the vast majority of concerns have been resolved throughout the Examination. The ExA acknowledges the replacement tree rates are agreed in the OLEMP [REP6-212] and would be placed according to the location hierarchy as detailed in AIA [REP5-058]. The ExA acknowledges the hedgerow replacement rate of 1:1. The ExA notes concerns that NE and the SDNPA would like the Applicant to commit to less than two years for reinstatement for sensitive locations, but that the Applicant has stated it is not possible to commit to a six-month period.
- 3.12.312. The ExA recognises the many control measures in the draft DCO such as Commitment C-103 secured by Requirement 22 controlling the loss and reinstatement occurring, the OLEMP [REP6-212] which recognises that establishment would need to be monitored, managed and remedial actions taken across a ten-year period and that replacement planting would be detailed within the stage specific LEMP for agreement with the relevant LPA and NE, secured through Requirements 12 and 13 of the Recommended DCO. The ExA noted the Forestry Commission's opinion that it should be consulted at the detailed design stage on mitigation and compensation measures for woodland and have included the

Forestry Commission in the list of organisations to be consulted in Requirement 12 of the Recommended DCO.

- 3.12.313. The ExA notes that the vegetation would be established across the wayleave, in the form of scrub as opposed to woodland in order to protect the cables from potential damage from tree roots. The ExA recognises this would cause a local detrimental impact for the duration of the operation on the Proposed Development, reducing habitat and reducing connectivity of the woodlands affected.
- 3.12.314. The ExA also recognises that there would be a net loss of biodiversity as a result of the Proposed Development overall and that full compensation for vegetation loss would be met through the delivery of the BNG approach.
- 3.12.315. The ExA notes the significant concern from IPs and LPAs raised throughout the Examination regarding potential effects on protected species from construction and vegetation loss and concern regarding the quality, quantity and timing of species surveys by the Applicant. The ExA acknowledges the update from the Applicant to Commitment C-208 at Deadline 1 cover all construction activity. The ExA is reassured that Horsham DC confirmed it has no remaining concerns regarding quantity or quality of ecological surveys in the vicinity of the Oakendene substation site and cable route near to this location but notes Horsham DC concern regarding the reliance on pre-construction surveys at the Oakendene West and Washington construction compounds and that there should be a robust process and procedure for undertaking such surveys and reporting the results to NE and LPAs in advance of any pre-commencement works. The ExA is satisfied that this would be adequately secured through Requirement 22 of the draft DCO [REP6-007], particularly Requirement 22(4)(a) Arboricultural management statement and tree protection plan, Requirement 40 vegetation retention plans and Requirement 22(4)(f) biodiversity management plan all of which would require to be informed by the pre-construction survey programme.
- 3.12.316. The ExA notes the position at the close of the Examination on protected species licences in that the Applicant has engaged with NE regarding LONI for the relevant protected species but no letters were submitted by the close of the Examination. The ExA is not aware of any information that would preclude LONI from being issued and notes the Applicant's and NE's joint position of the recognition of the risk to obtain the necessary licences should they be required lies with the Applicant. The ExA acknowledges NE's confirmation of the proposed wording from the Applicant in Requirement 44 of the draft DCO [REP5-005] updated at Deadline 6 [REP6-007] with regards to the pre-construction requirements for EPS and that NE considers the issue resolved. The ExA is therefore satisfied there are adequate controls in the Recommended DCO for protected species.
- 3.12.317. The ExA acknowledges the significant concerns from IPs regarding potential effects to nightingales, particularly in the northern areas of the Proposed Development. The ExA notes the positions of the LAs on this matter, particularly Horsham DC that it does not have concerns regarding the Applicant's surveys undertaken for nightingale and their territories and that the longer term wet woodland proposals for the Oakendene sub-station location would provide good foraging habitat for nightingale. The ExA notes West Sussex CC's suggestion for a further seasonal restriction of construction between October and July to further protect breeding nightingale but agrees with the Applicant in that Commitment C-21 which already commits the Applicant to scheduling of vegetation removal to avoid damage or destruction of active nightingale nests would only leave August and September to

install the transmission cables and that this is not reasonable or proportionate. The ExA is satisfied there are adequate controls in the Recommended DCO to protect nightingale to a satisfactory level.

- 3.12.318. Given the changes to the redline boundary from the change request from the Applicant to maintain 25m buffer around Ancient Woodland areas and the updates made to Commitment C-216 in the Commitments Register [REP6-227] secured through Requirements 22 and restrictions to ecologically sensitive sites in Requirement 23 of the Recommended DCO, the ExA takes the position that there are adequate measures secured to protect this irreplaceable habitat from direct and indirect effects, given that the buffer is 10m greater than the Forestry Commission's standing advice of 15m. The ExA notes the justifications provided by the Applicant for the three access locations within the 25m buffer and considers these exceptions would not cause harm or deterioration to Ancient Woodland.
- 3.12.319. The ExA recognises NE and SDNPA's ongoing concerns regarding the risk of HDD under sensitive irreplaceable habitats and sensitive ecological locations. Regarding the drilling depth of 6m, it is the ExA's view that the Applicant has set out a strong case for a minimum depth of 6m under Ancient Woodland. Given the evidence provided into the Examination and NE's and the Forestry Commission's agreement that 6m is a reasonable drill depth, the ExA considers this matter resolved.
- 3.12.320. Regarding the principle of HDD under Ancient Woodland and other sensitive ecological locations, the ExA notes NE's and SDNPA's unresolved positions on HDD at the close of the Examination. The ExA considers that the crossing schedule, secured via a new Requirement 46 in the Recommended DCO, 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. On this basis open cut trenching would not be permitted at the locations in the crossing schedule allocated for trenchless crossings within this Recommended DCO. The risk of feasibility of the trenchless crossings committed to remains with the Applicant and the ExA considers this matter resolved. Given this position above and the resolution on the timing of construction activities to protect wintering birds at Climping Beach SSSI, the ExA takes the view that there would be no adverse effect to the SSSI at Climping Beach.
- 3.12.321. The ExA acknowledges the concern from LPAs and the SDNPA over the likely success of hedge notching in this area. The ExA notes the improvements the Applicant made to the OLEMP [REP6-212], the tightened Requirement 14 regarding BNG commitments and that there were no outstanding points related to this issue from West Sussex CC or NE at the close of the Examination. The ExA notes that the SDNPA remained unconvinced of its success but are reassured by the revisions to the OLEMP at Deadline 5 [REP5-072] updated at Deadline 6 [REP6-212] stating amongst other maintenance points that including that hedgerows would be monitored twice yearly up to year five, and annually in years six to ten following reinstatement. Should any of the planted or translocated sections fail in this period they would be replaced with plants of a suitable size in the first planting season following the monitoring visit. The ExA consider that there are suitable controls within the Recommended DCO for this issue to be considered resolved.
- 3.12.322. The ExA acknowledges that the need to compensate for net loss from the Proposed Development but that the need to secure any BNG enhancement is not a current

requirement for NSIPs and therefore the 10% BNG for the Proposed Development is a voluntary measure from the Applicant.

- 3.12.323. The ExA notes the explanation given by the Applicant [REP6-204] that there would be a net loss to biodiversity as a result of the Proposed Development without the delivery of additional off-site biodiversity unit, with this loss driven predominantly by the permanent habitat loss at the onshore substation sites and the reinstatement works to deliver the same habitat type at the same condition as in the current baseline for the majority of situations.
- 3.12.324. The ExA acknowledges the confusion that was encountered during the Examination regarding the distinction between the proposals for securing and delivery of the compensation and enhancement elements of BNG has been resolved, with a clear distinction of units required for compensation to achieve no net loss and units required to achieve 10% net gain shown in Table 4-5 of [REP6-204].
- 3.12.325. The ExA notes that Commitment C-104 in the Commitments Register [REP6-227] secured by Requirement 14 in the Recommended DCO means compensation for 70% of the net loss deficit would be secured prior to commencement of construction based on the realistic worst-case scenario and also commits the Applicant to deliver 10% BNG for the onshore elements of the Proposed Development.
- 3.12.326. The ExA notes the updates the Applicant made to the BNG information throughout the Examination and that the presentation of BNG information per local authority area including the SDNP separately was welcomed by the local authorities and NE. The ExA notes the SDNPA's request for a more granular approach to the BNG calculations and considers the Applicant's reasons for not doing so an adequate explanation at this stage. The ExA encourages the Applicant to continue to work closely with the SNPA to provide information in the most useful way possible to the SNPA at the post-content stage, if the Secretary of State is minded to make the Order. The ExA notes the acceptance of the BNG calculations by Horsham DC and approach by West Sussex CC at Deadline 6.
- 3.12.327. The ExA is satisfied that the Applicant's approach to BNG adheres to the mitigation hierarchy as stated in the BNG Appendix 22.15 [REP6-204]. The ExA takes the position that this is consistent with the Applicant's approach to the application of the mitigation hierarchy throughout the ES and is adequately secured through Commitment C-292 in the Commitments Register [REP6-227].
- 3.12.328. The ExA acknowledges the concern from LPAs over whether compensation for net biodiversity loss experienced within a local authority area would be secured within its area and is reassured that the Applicant expects that suitable biodiversity units would be available in each LPA's boundary, whilst recognising the need to meet trading rules within the Statutory Biodiversity Metric and availability within the local market. The ExA is satisfied that Requirement 14 of the Recommended DCO adequately secures the need for each stage specific BNG strategy, including the location and types of biodiversity units that are to be purchased, to be discussed and agreed with the relevant planning authority.
- 3.12.329. The ExA welcomes the prioritisation type of unit needed to satisfy metric trading rules and welcomes confirmation from the Applicant that based on current understanding, it is likely that all required biodiversity units could be delivered within the proposed Order limits or within 2km of them. The ExA is reassured from the discussions the Applicant reported on having with landowners who had expressed

interest in delivering BNG and discussions with local authorities and the EA to discuss the approach to BNG.

- 3.12.330. The ExA notes the issues that were raised during the Examination in regards to Requirement 14 to secure BNG. The ExA considers that there are sufficient controls in the Recommended DCO for the compensation and net gain elements of biodiversity to be secured and delivered. The ExA is satisfied with the wording of Requirement 14 in the Recommended DCO and notes the acceptance of this wording by West Sussex CC and lack of any rejection of the wording by other local authorities in Deadline 6 submissions.
- 3.12.331. The ExA accepts that there would be a large number of insects that fly across the English Channel and some may be rare species. Some of these insects may be killed by the turning blades of the proposed WTGs. However, there is not sufficient substantive evidence before the ExA to determine whether this would result in significant insect population effects. Furthermore, NE does not foresee the effects of insect mortality impacting on protected sites, habitats and/or species. On this basis, the ExA are not convinced that there would be significant effects to migratory insects that would need further assessment for this Proposed Development. There would therefore be no conflict with policy, including NPS EN-3 2011 as a result of this matter.
- 3.12.332. The ExA notes that in its LIR [REP1-049] the SDNPA stated that proposals should align with the South Downs Local Plan (SDLP) policies SD9 and SD11 to:
- Retain, protect and enhance features of biodiversity and geological interest, including supporting habitat and commuting routes and to ensure appropriate and long-term management of those features.
 - Contribute to the restoration and enhancement of existing habitats and the creation of linkages between sites to create and enhance local and regional ecological networks, giving particular regard to ecological networks and areas with high potential for priority habitat restoration or creation.
 - Provide adequate protection zones and buffers around hedgerows and other woodland and trees. A minimum buffer of 15m would be required between development and Ancient Woodland.
- 3.12.333. The ExA notes that the SDNPA did not specifically confirm in its SoCG [REP6-254] or Closing Statement [REP6-300] whether or not the Proposed Development aligned with the SDLP policies SD9 and SD11 at the close of the Examination. However, the ExA considers that aspects contributing to alignment with policies SD9 and SD11 have been adequately explored throughout the Examination and reported on within this section of the Recommendation.
- 3.12.334. The ExA considers that all other raised matters raised in relation to biodiversity and terrestrial ecology were addressed satisfactorily by the Applicant.

Conclusions

- 3.12.335. The ExA examined all the Applicant's submitted assessments and considered all the issues raised during the Examination related to terrestrial ecology and nature conservation.
- 3.12.336. The ExA concludes that the Applicant has effectively mitigated effects on sensitive ecological receptors such as Ancient Woodland, veteran trees, protected species

and SSSIs and the Recommended DCO sufficiently secures compensation for the loss of vegetation particularly Category A and B trees and hedgerows. However, the ExA acknowledges that there would be some localised, short term harm from the Proposed Development, particularly at the site of the proposed Oakendene substation. The ExA recognises that the Applicant's plans for mitigation, compensation and BNG, particularly commitments for 70% of the biodiversity deficit to be secured prior to commencement of construction, go a long way to offset this impact. The ExA takes the position that the Applicant has demonstrated that such risks associated with the Proposed Development could be satisfactorily mitigated, managed and compensated for such that the effects would become not significant in the longer term through the many commitments in the Commitments Register [REP6-227], BNG of 10% in the longer-term and the many Requirements in the Recommended DCO, including Requirements 8, 12, 13, 14, 22, 23, 37, 40 and 44.

- 3.12.337. The ExA concurs with ES Chapter 22 [REP6-147] that there would not be any significant adverse effects from the Proposed Development in the longer-term. The ExA concludes that with the mitigation and compensation measures set out in the Recommended DCO, including the delivery of BNG secured through Requirement 14 of the Recommended DCO, with 70% of the deficit being secured prior to compensation and 10% BNG in the longer-term, that overall there would be a minor adverse effect which is not significant on terrestrial ecology from the construction, operation, maintenance and decommissioning of the Proposed Development.
- 3.12.338. The ExA concludes that the Proposed Development is in accordance with the relevant sections of NPSs EN-1 2011 and EN-3 2011. The ExA is satisfied that all relevant legislation, other national policies and strategies, and relevant local policies are complied with, that adequate mitigation is secured in the Recommended DCO regarding terrestrial ecology and nature conservation and there are no other important or relevant considerations.
- 3.12.339. The ExA attaches a Little Negative weight to the overall effect on terrestrial ecology and nature conservation in the planning balance.
- 3.12.340. Under the Transitional Arrangements, policy compliance with NPS EN-1 and EN-3 2024 is not required. The ExA is aware that NPS EN-1 2024 places additional considerations for terrestrial ecology and nature conservation, some of which the Applicant has addressed but others have not been fully achieved, and thus is arguably not in full compliance. The ExA considers the following points from NPS EN-1 2024 are not fully met:
- Paragraphs 4.6.11 to 4.6.18 regarding delivery of wider environmental net gains.
 - Paragraph 5.4.33 regarding opportunities to sequester carbon.
 - Paragraph 5.4.36 to produce a Biodiversity Management Strategy.
- 3.12.341. However, the ExA considers that the broad thrust of policies in NPS EN-1 2024 are not dissimilar to those to NPS EN-1 2024, rather that they require new applications to go further. Therefore, there is nothing in NPS EN-1 2024 which would render the current scheme to be considered unacceptable in terrestrial ecology matters when taking into account the regard to be had to it during the Transitional Arrangements.

3.13. SEASCAPE, LANDSCAPE AND VISUAL EFFECTS

The Applicant's Case

- 3.13.1. The Applicant's Case for seascape, landscape and visual effects is set out in the ES, Volume 2, Chapter 15 [REP6-131], supplemented by:
- Volume 3 Figures Parts 1 to 8 [APP-088 to APP-095].
 - Volume 4 Appendix 15.1 Seascape, Landscape and Visual Impact Assessment consultation responses [APP-157].
 - Volume 4 Appendix 15.2 Seascape, Landscape and Visual Impact Assessment methodology [APP-158].
 - Volume 4 Appendix 15.3 Simple Seascape, Landscape and Visual Impact Assessment [APP-159].
 - Volume 4 Appendix 15.4 Viewpoint assessment [APP-160].
 - Volume 4 Appendix 15.5 Assessment of aviation and navigation night-time lighting [APP-161].
 - Volume 4 Appendix 15.6 supplementary night-time viewpoint assessment [PEPD-024].
- 3.13.2. The MDSs are summarised at table 15-25 of the ES Volume 2, Chapter 15 [REP6-133] for seascape, landscape and visual effects.
- 3.13.3. Embedded Environmental measures for seascape, landscape and visual effects are listed at table 15-26 of the ES Volume 2, Chapter 15 [REP6-133] and the Commitments Register [REP6-227] and include:
- C-37 WTGs Parameters.
 - C-38 Foundation Parameters.
 - C-40 Offshore Substation Parameters.
 - C-43 Subsea export cable parameters.
 - C-61 Rampion 1 Design Principles.
 - C-62 Marking and Lighting.
 - C-94 Marking and Lighting.
 - C-98 Marine navigational lighting.
 - C-110 Lighting Scheme.
 - C-266 Intensity of aviation lighting.
- 3.13.4. The offshore element of the Proposed Development is not within the boundary of an area subject to landscape designations. The Offshore array is outside of the National Landscapes Isle of Wight (IoW) and Chichester Harbour (CH) (formerly referred to as Areas of Outstanding Natural Beauty).
- 3.13.5. The National Parks statutory purpose and duty are to conserve and enhance the natural beauty, wildlife and cultural heritage of the area and to promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public. The Special Qualities of the SDNP are:
- SQ1. Diverse, inspirational landscape and breathtaking views.
 - SQ2. A rich variety of wildlife and habitats including rare and internationally important species.
 - SQ3. Tranquil and unspoilt places.
 - SQ4. An environment shaped by centuries of farming and embracing new enterprise.
 - SQ5. Great opportunities for recreational activities and learning experiences.

- SQ6. Well-conserved historical features and a rich cultural heritage.
- SQ7. Distinctive towns and villages, and communities with real pride in their area.

3.13.6. Seascape character areas within the study area are shown at ES Figure 15.4 Volume 3 [APP-088]. At a national level the array lies within Seascape of Sussex Bay, partially within the Selsey Bill to Seaford Head Marine Character Area 07 (MCA) and partially within the English Channel MCA 13. At a regional level the array lies within Seascape Character Areas (SCA) Selsey Bill to Worthing inshore and offshore SCA 07A & SCA 07b and Worthing to Seaford Head inshore and offshore SCA07c and 07d. The Seascape baseline is described at ES Chapter 15 [REP6-131].

3.13.7. ES Chapter 15 summarises the assessment of residual effects for Seascape, Landscape and Visual receptors at table 15-43 [REP6-131]. In summary the ES concludes major adverse seascape, landscape and visual effects of the offshore elements of the Proposed Development would occur and be contained within the areas of the SDNP, West Sussex, East Sussex and the City of Brighton & Hove.

3.13.8. Within these areas the ES identifies these SLV effects as:

- Perceived direct impacts upon Seascape Character Areas such as SCA 07a and SCA 07b.
- SDNP SQ1 “Diverse, inspirational landscapes and breathtaking views” (during construction and operation) and SQ3 “Tranquil and unspoilt places” (during construction).
- Landscape Character Areas including A1 Arun and Adur Open Downs on views from closest areas north of Worthing around Cissbury Ring and Highdown Hill.
- Direct impacts from views at locations including VP1-4 Sussex Heritage Coast, VP16-21, VP 28, VP30, VP50- 55 and recreational routes such as Souths Downs Way and Monarchs Way.
- West Sussex as direct views from recreational routes including Arun Way and National Cycle Network Route 2 and landscape character such as SC1 South Coast Shoreline from long narrow shoreline of shingle banks to the east of Selsey Bill.
- East Sussex and Brighton and Hove as direct views from Brighton Sea front promenade and several coastal locations including VP 5 & 6, VP10 to 14 and VP 40.

3.13.9. The Applicant’s Case for landscape and visual is set out in the ES, Volume 2, Chapter 18 [REP6-137], supplemented by:

- Volume 3 Figures Part 1 to 6 [REP6-183 to REP6-188].
- Volume 4 Appendices 18.1 Landscape and visual impact assessment methodology [APP-167].
- Volume 4 Appendices 18.2 Viewpoint Analysis [REP6-194].
- Volume 4 Appendices 18.3 Landscape Assessment [REP6-197].
- Volume 4 Appendices 18.4 Visual Assessment [REP6-198].
- Volume 4 Appendices 18.5 Residential Visual Amenity Assessment [REP6-200].
- Volume 4 Appendices 18.6 Viewpoint Directory [REP6-202].

3.13.10. In addition to the above, the following are also relevant to this topic:

- Volume 4 Appendix 22.5 Hedgerow Survey Report [APP-183].
- Volume 4 Appendix 22.16 AIA [REP5-058].

- 3.13.11. The MDSs are summarised at table 18-24 of the ES Volume 2, Chapter 18 [REP6-137] for landscape and visual effects. Embedded Environmental measures for Landscape and Visual Effects are listed at table 18-25 of the ES Volume 2, Chapter 18 [REP6-137] and the Commitments Register [REP6-227] and include:
- C-1 Buried onshore cable route.
 - C-5 Trenchless crossings.
 - C-6 Avoidance of sensitive sites.
 - C-19 Construction of cable route in discrete sections.
 - C-20 Construction working area.
 - C-27 Reinstatement of Construction Compounds.
 - C-33 Stage Specific CoCP.
 - C-66 Minimise effects on SDNP.
 - C-68 High Standard of Design onshore substation.
- 3.13.12. Landscape character areas within the study area are shown at ES Figure 15.5 at a national level and ES Figure 15.6a at a regional level Volume 3 [REP6-183] and the baseline described at ES Chapter 18 [REP6-137]. Landscapes found within the onshore parts of the study area have been designated or defined due to their scenic or historic landscape qualities including SDNP and the Sussex Heritage Coast.
- 3.13.13. ES Chapter 18 summarises the assessment of residual effects for Landscape and Visual receptors at tables 18-31 to 18-45 [REP6-137]. In summary the ES concludes that major adverse landscape and visual effects of the onshore elements of the Proposed Development would occur and be contained within the areas of the SDNP, new onshore Substation at Oakendene, the extension to the existing Bolney Substation, at Recreation and Tourist Destinations, Recreation Routes including Public Rights of Way and transport routes.
- 3.13.14. Within these areas the ES identifies these LVA effects as upon:
- SDNP SQ1 “Diverse, inspirational landscapes and breathtaking views” (during construction and operation) and SQ3 “Tranquil and unspoilt places” (during construction).
 - Oakendene area from the new Onshore Substation as landscape character effects to J3 Cowfold Shermanbury Farmlands and visual effects to PROW such as 1786 & 787 and transport routes A272 & A281.
 - Bolney area from the extension to the existing onshore substation as visual effects for PROW 1T for an approximate length of 350m.

Examination Issues

- 3.13.15. Seascape, landscape and visual effects was an initial principal issue in Annexe C of ExA Rule 6 letter [PD-006] in relation to the level of effect from the construction of the offshore WTGs and substations, and night lighting particularly upon but not limited to SDNP including Sussex Heritage Coast, West Sussex, East Sussex and City of Brighton and the Isle of Wight and Chichester Harbour National Landscapes (formerly referred to as Areas of Outstanding Natural Beauty).
- 3.13.16. Various RR’s considered seascape, landscape and visual impacts, concerning the size location and proximity of the WTGs to the coastline and specific impacts this may cause. The principal seascape issues considered in the Examination were as follows:
- ES Methodology regarding the consideration of the Rampion 1 OWF.

- The level of effect upon designated landscapes (National Landscape and the SDNP).
- Dark Skies Designation and Night-time lighting.
- Potential for reduction in array parameters including size, location and proximity of WTGs.
- Mitigation, Compensation and Furtherance.

3.13.17. Landscape and visual effects was an initial principal issue in Annexe C of the ExA's Rule 6 letter [PD-006] in relation to the effect upon landscape character and visual amenity caused by the construction of the cable route and substation, particularly upon but not limited to those associated with the new onshore Substation at Oakendene, the extension to the existing Bolney Substation, at Recreation and Tourist Destinations, Recreation Routes including Public Rights of Way and transport routes.

3.13.18. Various RR's considered landscape and visual impacts, concerning the construction of the onshore substation and onshore cable corridor and specific impacts this may cause. The principal landscape issues considered in the Examination were as follows:

- ES Methodology.
- The level of effect upon designated landscape (the SDNP).
- Dark Skies designation and Night-time lighting.
- Mitigation, Compensation and Furtherance.

3.13.19. The main issues considered during the Examination for seascape and landscape identified above overlap and have therefore been considered together in this

ES Methodology

3.13.20. NE [RR-265] and SDNPA [REP1-049] were concerned regarding how the Rampion 1 OWF was treated within the ES. NE considered that the Rampion 1 OWF should form part of the SLVIA baseline and SDNPA considered that the Rampion 1 OWF should not form part of the baseline and be included within the cumulative assessment.

3.13.21. The Applicant responded at Deadline 1 [REP1-017] which stated that the approach was in accordance with guidance (GLVIA3, Landscape Institute 2013, paragraph 7.13) and in undertaking its cumulative assessment with the Rampion 1 OWF, the Applicant has followed the Inspectorate's Advice Note Seventeen: CEA relevant NSIPs, in particular the note under table 2.

3.13.22. ExA WQ SLV 1.4 [PD-009] asked SDNPA and NE to justify their position contrary to that of the Applicant. SDNPA and NE responded at Deadline 3 [REP3-085 & REP3-071]. The issue was discussed at ISH2 [REP4-072] in the absence of NE where in SDNPA confirmed their view that the Rampion 1 OWF should not be part of the baseline. The Applicant responded further at ISH2 reiterating their stance in their Post Hearing Submission Note [REP4-072]. Although within SDNPA SoCG [REP6-254] this matter was not agreed it was categorised as no material impact upon the assessment conclusions.

3.13.23. At the start of the Examination there was much disagreement upon the ES Methodology for landscape and visual impact assessment particularly from SDNPA [AS-006] and West Sussex CC [AS-008]. SDNPA main areas of concern were:

- Viewpoint selection and micro-siting.
- Sequential Versus Kinetic viewpoint testing.
- Downplaying of effects.
- Assessment of perceptual qualities.
- Assessment of whole scheme effect.

3.13.24. By the close of the Examination the matter of viewpoint selection and micro-siting had been agreed and the remaining matters were unresolved. West Sussex CC areas of concern were regarding the downplaying of visual and landscape impacts of construction activity, viewpoint locations, the method scope and scale of the RVAA, lack of clarity in the design principles considered with the Good Design section of this Recommendation. However, all these matters were agreed and confirmed as resolved within West Sussex CC final PADS [REP6-281].

3.13.25. The ExA did not need to question any further on the ES Methodology in the Examination.

The level of effect upon the National Landscape and National Park

3.13.26. The National Landscape and National Park affected from the construction of the offshore WTGs and substations of the Proposed Development are:

- The SDNP including Sussex Heritage Coast.
- The Isle of Wright National Landscapes (formerly referred to as Areas of Outstanding Natural Beauty).
- The Chichester Harbour National Landscapes (formerly referred to as Areas of Outstanding Natural Beauty).

3.13.27. The main concern from NE [RR-265], also raised by the SDNPA [AS-006] was the level of effect upon the seascape, landscape character and visual amenity from the construction and operation of the offshore WTGs and substations, and night lighting due to the size, location and proximity of WTGs in respect of:

- Rampion 1 Design Principles.
- Effect upon Special Qualities of the SDNP.
- Effect upon National Landscapes.

Rampion 1 Design Principles

3.13.28. Rampion OWF, which the Proposed Development would adjoin, was subject to a set of design principles during its design evolution, to assist in minimise harm to the SDNP including Sussex Heritage Coast. The Applicant considered that due regard should be had to the design principles, but parties considered that these design principles should be applied to the Proposed Development, including Design Principle (iii) which related to the location of the largest turbines, in any hybrid scheme, to the south-western portion of the Order limits.

3.13.29. The application of the Rampion 1 Design Principles into the Proposed Development was the subject of much debate in the Examination. NE [RR-265] was concerned about whether in fact the Applicant had had due regard to the Rampion 1 Design Principles particularly Principle (iii) and whether the way the Design Principles had been applied to the Proposed Development went far enough.

- 3.13.30. The Applicant provided further evidence at Deadline 1 within the SLVIA MDS and Visual Design Principles Clarification Note [REP1-037]. In WQ SLV 1.3 [PD-009] the ExA asked NE questions on the individual Design Principles and the assertions that the Applicant had made in respect of the effect of these Design Principles in [REP1-037]. NE responded at Deadline 3 [REP3-085] disagreeing with the Applicants assertions that:
- There is a distinct gap between Rampion 1 OWF and the Proposed Development.
 - The Proposed Development will form a clearly separate array grouping that has a narrower lateral spread in field of view than Rampion 1 OWF.
 - That the South of Rampion 1 OWF is the optimal location within zone six.
 - And that the Applicant's statement that additional 7 degrees over and above Rampion 1 OWF is relatively small lateral spread is misleading.
- 3.13.31. The Applicant responded further at Deadline 4 [REP4-070] noting NE response [REP3-085] but did not have any further comments to make on this matter.
- 3.13.32. The ExA asked several questions at ISH2 [REP4-072] regarding the individual Design Principles and their effectiveness in reducing impacts. Regarding Rampion 1 Design Principle (iii) SDNPA accepted the Applicant's response that Rampion 1 Design Principle (iii) is not relevant to the Proposed Development in response to NE's Deadline 2 submission [REP3-052], and that Requirement 2 of draft DCO [REP3-004] adequately restricted the WTGs to a uniform height and rotor diameter.
- 3.13.33. Because NE declined to attend any of the Hearings, the ExA issued a Rule 17 request posing questions reference Q6C-1 and Q6C-2 [PD-011] requesting NE's opinion on whether Rampion 1 Design Principles should apply regardless [REP3-083] and NE view that Design Principle (iii) is relevant. NE responded at deadline 4 [REP4-097] reiterating their view on the matter of Rampion 1 Design Principles applying regardless and responded at deadline 5 in regard to design principle (iii).
- 3.13.34. At the close of the Examination, it remained a matter where there was much disagreement:
- SDNPA confirmed that Rampion 1 Design Principle (iii) was not necessary to be applied whereas NE did not agree, remaining of the opinion that all of Rampion 1 Design Principles should be applied to the Proposed Development.
 - SDNPA considered the Design Principles set out at ES Chapter 15 [REP6-131] had not gone far enough however they did confirm that Seascope [REP4-085] alone should not be a reason to refuse consent.
 - NE [RR-265] considered no location in Zone 6 was acceptable whereas SDNPA [REP3-071] acknowledged that if it was deemed to be unavoidable the areas to the south of the Rampion 1 OWF is likely to be less impactful.
- 3.13.35. The ExA did not need examine this matter further in the Examination because the ExA had all the evidence needed to make a conclusion.
- Effect upon Special Qualities of the National Park*
- 3.13.36. NE [RR-265] and SDNPA [REP1-049] were concerned about the impact upon the Special Qualities of the SDNP and how the overall assessment of the impact upon Special Qualities had been carried out within the ES.

- 3.13.37. The ExA asked questions at ISH1 [REP1-033] in relation to Special Qualities of the SDNP resulting in action point 27 which was the submission of a singular document on the effects of the Proposed Development on the special qualities of the SDNP including mitigation and enhancement proposals or instead submit a sign-posting document to this effect. The Applicant submitted ISH1 Appendix 5 Further Information Action Point 27 – South Downs National Park at Deadline 1 [REP1-024] setting out the assessment of effects on the Special Qualities of the SDNP in a singular document.
- 3.13.38. In WQ SLV 1.5 [PD-009] the ExA asked the Applicant, NE and SDNPA to explain what the correct approach is in concluding on the impact upon special qualities and whether the statutory purposes of the designation would be compromised in the context of the Applicant's conclusions on harm to statutory purposes [REP1-017], NE response [REP2-039], and to the SDNPA's LIR [REP1-049].
- 3.13.39. The Applicant [REP3-051], NE [REP3-085] and SDNPA [REP3-071] responded at Deadline 3. The respective positions were that:
- The Applicant favoured the approach whilst there is harm to SQ1 "Diverse, inspirational landscapes and breathtaking views" (during construction and operation) and SQ3 "Tranquil and unspoilt places" (during construction), the statutory purpose of the SDNP would not be compromised and reasons for its designation will not be undermined by the Proposed Development.
 - NE and SDNPA favoured the approach that at the point of harm the statutory purposes are compromised.
- 3.13.40. The Applicant cited other DCOs such as East Anglia Two Offshore Windfarm, Awel y Mor Windfarm, Sizewell C Nuclear Power Station and Sheringham Shoal and Dudgeon Offshore Wind Extension project, as precedents to collaborate their approach.
- 3.13.41. Q6d-1 and Q6d-2 from the ExA Rule 17 letter to NE [PD-011] asked whether NE considered any harm to special qualities inevitably compromises the Statutory Purpose of the SDNP and whether that remained NE view when taking account of [REP3-051] that included Appendix F SLV: Examples of Permitted NSIPs affecting special qualities and statutory purpose of national landscapes. NE responded at Deadline 4 [REP4-097] providing a detailed response but ultimately advising that:
- *If an assessment concludes harm is predicted to occur to a single special quality, then it follows that harm will be caused to the natural beauty of the designation, and the purposes of designation; and*
 - *That the examples provided by the Applicant pre-date the enactment of the enhanced duty on Relevant Authorities in respect of Protected Landscapes as introduced by Levelling Up and Regeneration Act 2023 Section 245.*
- 3.13.42. At the close of the Examination there was still disagreement on the way to assess the impacts upon the Special Qualities of the National Park and whether the purpose for designation would be compromised. However, the Applicants submission [REP1-024] on the Special Qualities of the SDNP which was updated at Deadline 4 [REP4-063] to include how the Applicant had sought to further the purposes of the SDNP had resolved SDNPA concerns on the way the Special Qualities of the National Park had been assessed within the ES.

Effect upon National Landscapes

- 3.13.43. NE [RR-265] questioned whether the assessment upon National Landscapes was adequate for the ExA. In the ExA's Rule 17 question Q6-3 [PD-008] arising from ISH1 [REP1-033] the ExA asked NE to justify why and what further assessment of the west ward expansion is required and explain why the existing assessments are not adequate to consider these impacts in relation to National Landscapes (Chichester Harbour and the eastern portions of the Isle of Wight).
- 3.13.44. NE responded at Deadline 2 [REP2-040] stating that the ExA did not have sufficient information upon whether the Design Principles had been applied to the consideration of effects on the Chichester Harbour and Isle of Wight National Landscapes and Navigation and aviation lighting will result in significant effects on IoW National Landscape Special Quality (SQ) 5 which includes 'dark starlit skies'.
- 3.13.45. Navigation Lighting is considered within the Navigation section of this Recommendation. Regarding the Design Principles the Applicant was asked to respond to NE concerns at ExA WQ1 SLV 1.8 [PD-009]. The Applicant responded at Deadline 3 [REP3-051] reiterating the ES findings in the context of the reduction of the spatial extent of array area compared to the PEIR stage and that as no significant effects were identified further design mitigation was not considered necessary.
- 3.13.46. In WQ SLV.1.2 [PD-009] NE was asked why it had a differing opinion, on the Conclusion of the ES that the Proposed Development would result in not significant effects on views or special qualities of the IoW National Landscape, to the Applicant and IoW. NE confirmed in responses at Deadline 3 [REP3-085] the difference of professional opinion on the significance of moderate effects identified within the ES.
- 3.13.47. The ExA was satisfied with the response and did not need to question any further on this matter in the Examination.
- 3.13.48. A large number of IPs in their RR's including [RR-345], [RR-283], [RR-192], and [RR-041] raised concern regarding the proximity of the WTGs to the Heritage Coast within the National Park, suggesting that they would be within the landscape buffer distance of 12 nautical miles quoted from Offshore Energy Strategic Environmental Assessment 2 (OESEA2).
- 3.13.49. The Applicant responded at Deadline 1 [REP1-017] stating that: OESEA 2020 is a strategic tool that does not suggest no-go areas for development and is not guidance or a roadmap for placing of wind farms, which are allocated by TCE. OESEA4 (2022) is the latest Strategic Environment Assessment (SEA) which recognises that "In practice development scenarios will vary for each individual wind farm and also the variables determining visibility for individual wind farms. The visibility of structures from the coast, or their intrusion on sites designated for their visual qualities, does not necessarily preclude development in planning (see: NPS (EN-1) and the MPS), and any consideration of coastal "buffers" is too generalised an approach to take into consideration the many anthropogenic and natural variations along the coast and the variety of development scenarios which might take place (e.g. installation number, type, design and orientation)".
- 3.13.50. The ExA was satisfied with the response and did not need to question any further on this matter in the Examination.

Dark Skies Reserve & night-time lighting

- 3.13.51. In its PADS [AS-008] West Sussex CC were concerned about the lack of nighttime view assessment for West Sussex receptors outside of the International Dark Skies Reserve.
- 3.13.52. The Applicant submitted further night-time visualisations at the Pre-Examination procedural deadline [PEPD-024]. WQ SLV 1.10 [PD-009] was posed to West Sussex CC to confirm that the nighttime visualisations had addressed their concern. West Sussex CC confirmed that it did and at the close of the Examination this issue was resolved with the matter removed from West Sussex CC final PADS [REP6-281].
- 3.13.53. SDNPA in its PADS [AS-006] were concerned about the lack of consideration of effects on Dark Skies in the assessment of landscape and visual impact particularly in regard to the HDD crossing areas that would be lit at night-time. SDNPA's view was that a standard construction lighting approach set out in the Outline CoCP [APP-224] was not sufficient.
- 3.13.54. The Applicant updated the Outline CoCP at Pre-Examination procedural deadline [PEPD-033] so that specific reference was made to the SDNP Dark Skies Technical Advice Note on this matter. At the close of the Examination this issue was agreed and SDNPA confirmed this in their SoCG [REP6-254].

Potential for reduction in array parameters including size, location and proximity of WTG's.

- 3.13.55. NE suggested [RR-265] amendments to the Proposed Development including exclusion of WTGs from the eastern array and a reduction in the combined lateral spread of Rampion 1 and Rampion 2.
- 3.13.56. SDNPA [REP1-052] suggested that the size of the WTGs should be reduced. However, it acknowledged that such a reduction in size would not change the overall conclusion on significance of effect.
- 3.13.57. In the absence of NE at ISH1 the ExA posed a Rule 17 WQs Q6-1 [PD-008] asking NE to justify its position on its suggested amendments. NE responded at Deadline 2 [REP2-039] reiterating that suggested amendments are needed on the basis of the sensitivity of the location and their concern over the size, proximity and lateral spread of the WTGs of the Proposed Development.
- 3.13.58. The ExA, taking account of NPS EN-1 2011 paragraph 5.9.2, explored matters on feasibility of reduction in array area and size of WTG at ISH2 [REP4-072]. The Applicant confirmed in their post hearing submission note [REP4-072] that given the economic, viability and technical constraints, the Proposed Development has already minimised impact as far as it can reasonably do within these constraints.
- 3.13.59. The ExA in WQ SLV 1.6 [PD-009] asked the Applicant to explain what was meant by "these opportunities are limited by the technical, economic and functional requirements of the Proposed Development to produce renewable energy, as well as other environmental factors" which the Applicant made in response to the aforementioned amendments to the Proposed Development. The Applicant in answer to the question explained these requirements at Deadline 3 [REP3-051].

- 3.13.60. The ExA was satisfied with the response and did not need to question any further on this matter in the Examination.

Mitigation, compensation and furtherance

- 3.13.61. The ExA posed oral questions to the Applicant and the SDNPA in respect of Mitigation, Compensation and Furtherance at ISH2 [REP4-072] particularly how the application will consider furtherance as the introduction of s245 of LURA was after the submission of the DCO for the Proposed Development. The Applicants Post Hearing Submission Note [REP4-072] confirmed that it would submit a document at Deadline 4 which would assist the Secretary of State in concluding if the special purposes of the National Park had been furthered, by setting out how the design evolution of the Proposed Development has sought to further the special purposes through conserving them where it can, through mitigation measures secured via the control documents and, where this was not possible, through providing compensation via the s106 agreement of the TCPA1990.

- 3.13.62. The Applicants provided further evidence at Deadline 4 [REP4-063] along with draft s106 agreements with SDNPA [REP4-077], Horsham DC [REP4-076] and West Sussex CC [REP4-077] however at Deadline 6 the Applicant submitted mitigation and enhancement principle documents with SDNPA [REP6-237] and Horsham DC [REP6-236] (that included landscape enhancement) and joint position statements on mitigation and enhancement signed by the Applicant with SDNPA [REP6-240], Horsham DC [REP6-238] and West Sussex CC [REP6-239]. The Applicant confirmed that although working on the draft s106 as evidenced by Deadline 4 submissions it could not be finalised and were not to be submitted into the Examination. However, the mitigation and enhancement principles document's [REP6-240, REP6-239 & REP6-238] set out the mechanism for delivery. The joint position statements importantly set out agreement on these matters between the Applicant, SDNPA, Horsham DC and West Sussex CC.

- 3.13.63. The mitigation and enhancement principles document for the National Park set out a substantial compensation fund of £3,512,400 to be applied towards projects identified capable of compensating for the residual effects of the Proposed Development including:

- Landscape, visual, ecological and cultural heritage effects.
- Long term landscape and visual effects arising from the construction and operation of the WTG comprising the Proposed Development.
- Effects on the ability to access and enjoy the National Park through the public rights of way network and South Downs Way during construction.

and conserving, enhancing and seeking to further National Park purposes. SDNPA in [REP6-254] confirmed that this will enable SNDP to deliver projects capable of conserving, enhancing and furthering the National Park purposes.

- 3.13.64. The mitigation and enhancement principle document for Horsham DC [REP6-238] also provide for a Compensation Fund for the residual adverse effects of the onshore elements of the Proposed Development on landscape character areas J3 - Cowfold & Shermanbury Farmlands, G1 - Ashurst & Wiston Wooded Farmlands, F1 - Pulborough, Chiltington & Thakeham Farmlands and E1 - Parham & Storrington

Wooded Farmlands & Heaths as part of the Wilder Horsham District Initiative, a partnership project between Sussex Wildlife Trust and Horsham DC.

- 3.13.65. The mitigation and enhancement principle document for West Sussex CC [REP6-239] also provide for a Compensation Fund for the residual adverse effects of the Proposed Development arising from removal of hedgerows and trees on the users of the highway and public right of way network within the West Sussex CC area and it would be applied towards the provision of increased tree or hedgerow planting and hedgerow restoration to compensate for these temporary residual adverse landscape effects.
- 3.13.66. The Requirements 41, 42 and 43 of the Recommended DCO secures the mitigation and enhancement in accordance with these principle documents. The s106 legal agreements are no longer required as separate entities as they form part of the package of measures within Requirements 41, 42 and 43 of the Recommended DCO.
- 3.13.67. At the close of the Examination SDNPA [REP6-254], despite concerns of the impact upon the National Park, Horsham DC [REP6-245] and West Sussex CC [REP6-255] all agreed the mitigation, compensation and furtherance package in their respective SoCG.

ExA's Findings

- 3.13.68. The NPS EN-1 2011 notes that references to landscape should be taken as covering seascape where appropriate. The NPS EN-1 2011 provides for the following:
- Acknowledges that virtually all nationally significant energy infrastructure projects will have effects on the landscape and that projects will need to be designed carefully, taking account of potential impacts, with the aim of minimising harm and providing reasonable mitigation where possible and appropriate.
 - That National Parks (NP) and Areas of Outstanding Natural Beauty (AONB) (now known as National Landscapes) are confirmed by the Government as having the highest status of protection in relation to landscape and scenic beauty. Each of these designated areas has specific statutory purposes which help ensure their continued protection and which the Secretary of State should have regard to in its decisions. The duty to have regard to the purposes of these nationally designated areas also applies when considering applications for projects outside the boundaries of these areas which may have impacts within them, with the aim being to avoid compromising the purposes of designation. The primary purpose of NPs is to conserve and enhance their natural beauty, wildlife and cultural heritage and to promote opportunities for the understanding and enjoyment of the special qualities of those areas by the public. The primary purpose of AONBs (now known as National Landscapes) is to conserve and enhance their natural beauty.
 - That the fact that a proposed project will be visible from within a designated area should not in itself be a reason for refusing consent.
 - Notes that the scale of such projects means that they will often be visible within many miles of the site of the proposed infrastructure and that the Secretary of State should judge whether any adverse impact on the landscape would be so

damaging that it is not offset by the benefits (including need) of the project. In reaching a judgment, the Secretary of State should consider whether any adverse impact is temporary and / or capable of being reversed in a reasonable timescale.

- Recognises that all proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites, and that the Secretary of State will have to judge whether the visual effects on sensitive receptors outweigh the benefits of the project. It goes on to state that coastal areas are particularly vulnerable to visual intrusion because of the potential high visibility of development on the foreshore, on the skyline and affecting views along stretches of undeveloped coast.
- Suggests that it may be helpful for Applicants to draw attention to any examples of existing permitted infrastructure they are aware of with a similar magnitude of impact on sensitive receptors.

3.13.69. In terms of mitigation, NPS EN-1 2011 states that reducing the scale of a project can help to mitigate the visual and landscape effects of a proposal but notes that this may significantly reduce function. It goes on to say that there may, however, be exceptional circumstances where mitigation could have a very significant benefit and warrant a small reduction in function.

3.13.70. NPS EN-3 2011 states in regard to seascape that:

- It is a discrete area within which there is shared intervisibility between land and sea, recognising that the seascape is an important resource and an economic asset, with coastal landscapes often recognised through statutory landscape designations.
- Where a proposed offshore wind farm will be visible from the shore, a seascape and visual impact assessment should be undertaken which should include an assessment of the limit of visual perception from the coast, individual characteristics of the coast which affect its capacity to absorb a development and how people perceive and interact with the seascape.
- Consent should not be refused solely on the ground of an adverse effect on seascape or visual amenity unless an alternative layout can be reasonably proposed which would minimise any harm or, taking account of the sensitivity of the receptor(s) set out in NPS EN-1, the harmful effects are considered to outweigh the benefits of the scheme.
- Neither the design nor scale of individual wind turbines can be changed without significantly affecting the electricity generating output of the wind turbines, and therefore it is unlikely that mitigation in the form of reduction of scale will be feasible.

3.13.71. The policy requirements of NPS EN-1 2024 in respect of landscape and visual matters were largely consistent with those policy requirements of NPS EN-1 2011. However, relevant additions / amendments include that for seascapes, applicants should consult the Seascape Character Assessment and the Marine Plan Seascape Character Assessments, and any successors to them.

3.13.72. The policy requirements of NPS EN-3 2024 were largely consistent with those policy requirements of NPS EN-3 2011. However, relevant changes include the following:

- That seascape requires consideration given it is an important environmental, cultural and economic asset, especially so where it provides the setting for a nationally designated landscape and supports the delivery of the designated

area's statutory purpose; and for stretches of coastline identified as Heritage Coasts which are associated with a largely undeveloped coastal character.

- Where a proposed offshore wind farm will be visible from the shore and would be within the setting of a nationally designated landscape with potential effects on the area's statutory purpose, an SLVIA should be undertaken which is proportionate to the scale of the potential impacts.
- Where necessary, assessment of the seascape should include an assessment of the limit of visual perception from the coast under poor, good and best lightening conditions, the effects of navigation and hazard prevention lighting on dark night skies, individual landscape and visual characteristics of the coast and the special qualities of designated landscapes, which limits the coast's capacity to absorb a development and how people perceive and interact with the coast and seascape.

3.13.73. The ExA is satisfied that the Applicant's approach in the ES to how the Rampion 1 OWF is treated is acceptable and leads to the adequate assessment within the ES. In reaching this conclusion the ExA is mindful of the guidance contained within GLVIA3 and the Inspectorate Advice note on cumulative effects along with the fact that SDNPA agreed that either approach would make no material impact upon the assessment conclusions.

3.13.74. The ExA is satisfied that the level of effect upon designated landscapes including the Isle of Wight and Chichester Harbour National Landscapes and the SDNP is adequately assessed within the ES.

3.13.75. In reaching this conclusion the ExA are satisfied that:

- The Applicant has had due regard to the Rampion 1 Design Principles and that Rampion 1 Design Principle (iii) is not relevant as a hybrid scheme of different sized WTG's is not part of the Proposed Development.
- That the Applicant has reduced the Seascape effects as far as possible through reduction in array areas (pre-submission) of the Proposed Development and the application of a set of Offshore Design Principles having as stated above due regard to the Rampion 1 Design Principles.
- The impact upon the Special Qualities of the SDNP have been adequately assessed.
- That the ES contains sufficient evidence to determine the impact upon the Isle of Wight and Chichester Harbour National Landscapes.
- That the OSEA2 guidance is of little relevance and even if it was, it is guidance that does not preclude the development within the specified distance of the coastline.

3.13.76. The ExA visited SDNP on many occasions including the USI and USI2 [EV1-001 & EV1-002] and took the time to view the coastline and landscape to understand and appreciate the Special Qualities of the National Park. The ExA viewed the coastline and landscape from important vantage points and viewpoints including from the South Downs Way, Chantry Lane, Sullington Hill, viewpoint 17 (Devils Dyke), viewpoint 19 (Highdown Hill) and viewpoint 52 (Chanctonbury Ring). At viewpoint 52 (Chanctonbury Ring) and the South Downs Way the ExA observed firsthand how the changeable weather conditions made a remarkable difference to the visibility of the WTGs of the Rampion 1 OWF. The ExA therefore considers it likely that the WTGs of the Proposed Development would only be notably visible on clear days notwithstanding they would be of a greater size than the Rampion 1 WTGs.

- 3.13.77. The ExA finds that in respect of National Landscapes that effects would be not significant due to distance of the array area (approximately 31km at the nearest point) in the case of IoW and in the case of CH not significant upon its character and the majority of its special qualities.
- 3.13.78. The ExA acknowledges the Applicants changes to the Outline CoCP in respect of dark skies designations and night-time lighting. The matter of dark skies and night-time lighting were agreed in West Sussex CC and SDNPA SoCG [REP6-254]. The ExA has no reason to come to a different conclusion and is therefore also satisfied that impacts of night-time lighting and impacts upon dark skies designations are adequately mitigated by the Commitments Register secured by the recommended DCO and recommended DML.
- 3.13.79. The ExA notes that potential reduction in array parameters including size and location of WTG's suggested by NE and SDNPA in the case of:
- Size of WTGs would not have made a difference to the overall assessment of significance of effect.
 - Location of WTG's would not have resulted in a small reduction in function of the Proposed Development.
- 3.13.80. The ExA is therefore satisfied that having taken account of NPS EN-1 2011 paragraph 5.9.21 that significant effects could not be mitigated through a small reduction in scale of the Proposed Development.
- 3.13.81. The matter of Mitigation, Compensation and Furtherance were agreed by SDNPA in its SoCG [REP6-254]. The ExA has no reason to come to a different conclusion. In the ExA's view the secured package of measures is substantial. The ExA is therefore satisfied with the Mitigation, Compensation and Furtherance package secured by the Recommend DCO.
- 3.13.82. Where not discussed in this section, the ExA is satisfied with the Applicants assessment in the ES, or subsequently satisfied with the Applicant's responses to questions and matters in relation to seascape, landscape and visual effects.
- 3.13.83. The ExA is satisfied, from the evidence submitted, that the Proposed Development has been adequately assessed in the ES, and that appropriate mitigation is set out in the Commitments Register [REP6-227], which is secured within the Recommended DCO, as well as those matters secured within the Recommended DML for both the onshore and offshore elements of the Proposed Development.
- 3.13.84. The ExA recognises that there would be some residual significant effects on seascape, landscape and visual receptors as a result of the Proposed Development.

Conclusions

- 3.13.85. The ExA finds, taking the Proposed Development as a whole, that there would be unavoidable harm to the seascape landscape and visual receptors, due to the construction of the Proposed Development and the presence of WTGs within the array area. However, the ExA notes that NPS EN-1 2011 recognises that a proposed project that is visible from within a designated area should not in itself be a reason for refusing consent and that it advises against the reduction in array size

and WTGs except for exceptional circumstances where a small reduction in function would have a very significant benefit.

- 3.13.86. The ExA considers that the overall design of the Proposed Development is acceptable, minimising the harm to the National Landscape and National Park and that appropriate mitigation is set out in the Commitments secured in the Recommended DCO.
- 3.13.87. Overall, the ExA considers that the presence of the Proposed Development, together with loss of views, would have an adverse effect on some seascape, landscape and visual receptors including in relation to the SDNP. As a result, there would be some conflict with the NPS EN-1 and EN-3 2011 in this regard.
- 3.13.88. However, there are several matters that the ExA accepts should be considered as follows:
- That the WTG's will not be fully visible all year round as the visibility is dependent upon the weather conditions nor would the WTGs be visible from all locations.
 - That there is the presence of Rampion 1 WTGs within the existing Seascape that moderates the presence of the Proposed Development and already exerts some degree of industrialisation into the otherwise open character of the sea.
 - That the Applicant has sought to avoid as far as possible comprising the purposes of designation.
 - That there are a limited number of Special Qualities of the SDNP affected and that the Applicants has had regard to sensitive Design.
- 3.13.89. The landscape enhancement scheme would not strictly mitigate the harm caused by the Proposed Development to seascape, landscape and visual receptors as the scheme would not screen or minimise the visual effects of the proposed WTGs on the receptor however other benefits could accrue including to the Special Qualities of the SDNP. Nevertheless, the ExA affords weight to the benefits of the landscape enhancement scheme for the making of the Order which would reduce the overall weight the ExA affords the harm arising from the adverse effects on seascape, landscape and visual from the Proposed Development.
- 3.13.90. The ExA finds, taking the Proposed Development as a whole, that there would be unavoidable harm to the landscape and visual receptors, due to the construction of the cable route and the presence of Onshore Substation where, in part, open countryside exists. The ExA accepts, however, that in accordance with NPS EN-1 2011 harm to the landscape is inevitable for a project such as the Proposed Development, and that in the medium to long term, the harm would reduce as the landscape mitigation proposed establishes.
- 3.13.91. The proposed landscape enhancement scheme would also compensate for landscape and visual harms identified and would provide benefits to the National Park over the longer term, including in respect of Special Qualities of the National Park. The landscape enhancement scheme is secured by Requirement 43 of the Recommended DCO. Also, the mitigation proposed by the Applicant, secured through the LEMP would take effect over the longer-term and effects of the cable route construction would be temporary.

- 3.13.92. The ExA considers that while the overall design of the Proposed Development is acceptable, embedded environmental measures secured in the Recommended DCO ensure that this would be carried out. As a result, there would be some conflict with the NPS in this regard. However, the ExA accepts that the construction impacts upon landscape are temporary and reversible.
- 3.13.93. Overall, the ExA concurs with ES Chapters 15 [REP6-131] and 18 [REP6-137] that the significance of effect from the Proposed Development to seascape, landscape and visual would, in some instances, be Major Adverse (Significant), caused by the operational activity and the loss of views.
- 3.13.94. The ExA considers that there would be some conflict with the NPS EN-1 2011 because, without mitigation, the Proposed Development would have a Major Adverse effect to the seascape, landscape and visual effects and in particular, to the Special Qualities of the SDNP. The ExA recognises that NPS EN-1 2011 requires weight to be appropriately apportioned having regard to the fact that NSIPs inevitably cause some degree of effect to landscape character and visual receptors, even with mitigation.
- 3.13.95. Overall, the ExA concludes that the Proposed Development partially accords with NPS EN-1, EN-3 and where relevant EN-5 2011. This is because without mitigation, the Proposed Development would have a Major Adverse effect to the seascape, landscape and visual effects and in particular, to the Special Qualities of the SDNP. The ExA is satisfied that all relevant legislation, other national policies and strategies, and relevant local policies are complied with, that adequate mitigation is secured in the Recommended DCO regarding seascape, landscape and visual matters and there are no other important or relevant considerations.
- 3.13.96. Having this in mind, and the fact that mitigation would, in time, reduce the effects of the Proposed Development, the ExA attaches Moderate Negative weight to seascape, landscape and visual matters in the planning balance.
- 3.13.97. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to seascape, landscape and visual matters and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.14. HISTORIC ENVIRONMENT

The Applicant's Case

- 3.14.1. The Applicant's Case is set out in the ES, Volume 2, Chapter 25 [REP6-153], supplemented by:
- Volume 3 Figures Parts 1 to 2 [APP-112 to APP-113].
 - Volume 3 Figures Part 3 of 5 [REP4-031].
 - Volume 3 Figures Part 4 of 5 [REP6-189].
 - Volume 3 Figures Part 5 of 5 [APP-116].
 - Volume 4 Appendices 25.1 Gazetteer of onshore heritage assets [APP-199]
 - Volume 4 Appendices 25.2 Parts 1 to 2 Onshore historic environment desk study [APP-200 to APP-201].

- Volume 4 Appendices 25.3 Onshore desk-based geoarchaeological and palaeo-environmental assessment report [APP-202].
 - Volume 4 Appendices 25.4 Onshore geophysical survey report Part 1 of 8 [PEPD-031].
 - Volume 4 Appendices 25.4 Onshore geophysical survey report Part 2 to 8 [PEPD-114 to PEPD-119].
 - Volume 4 Appendices 25.5 Oakendene parkland: historic landscape assessment [APP-211].
 - Volume 4 Appendices 25.6 Archaeological trial trenching at Brook Barn Farm [APP-212].
 - Volume 4 Appendices 25.7 Settings assessment scoping report [APP-213].
 - Volume 4 Appendices 25.8 Onshore heritage assets baseline report [APP-214].
 - the Outline Onshore Written Scheme of Investigation [REP5-070].
- 3.14.2. ES Chapter 25 [REP6-153] considered the effects of the Proposed Development on the historic environment, including designated and non-designated heritage assets and the potential effects including those arising through changes to historic landscape character, direct effects and indirect effects (changes to setting of heritage assets).
- 3.14.3. The study area is defined separately for the assessment of direct and indirect effects and in relation to the onshore and offshore elements of the Proposed Development. Wider study areas are used for identifying heritage assets. The study area in these scenarios is defined as:
- The Order limits for direct effects.
 - Indirect effects of the onshore cable route elements within 1km of landfall and cable route.
 - Indirect effects for the proposed onshore substation 2km of the onshore substation search area.
 - Indirect effects of the onshore extension of existing NGET substation within 1km of the NGET substation at Bolney.
 - Offshore elements within 25km of the array areas.
- 3.14.4. The study area for the direct onshore effects (the Order limits) is divided into three landscape zones consisting of zone 1 South Coast Plain, zone 2 South Downs and zone 3 Low Weald.
- 3.14.5. The MDSs are summarised at table 25-22 of the ES Volume 2, Chapter 25 [REP6-153]. Embedded Environmental measures for the Historic Environment are listed at table 25-23 of the ES Volume 2, Chapter 25 [REP6-153] and the Commitments Register [REP6-227] including:
- C-6 Avoidance of sensitive sites where practicable.
 - C-68 High design standard for proposed onshore substation.
 - C-79 Archaeology mitigation by preservation by record.
 - C-80 Mitigation of loss of built heritage assets or historic landscape through proportionate level of survey, recording and dissemination.
 - C-82 Mitigation of significant effects on heritage assets arising through change in setting.
 - C-225 Unknown archaeology remains of national heritage significance.
- 3.14.6. The Onshore WSI is secured by Requirement 19 of the draft DCO [REP6-007].

- 3.14.7. ES Chapter 25 summarises the assessment of residual effects for Historic Environment at tables 25-30 and 25-31 [REP6-153]. In summary the ES concludes that during construction phase the adverse effects upon above ground heritage assets would be:
- Moderate adverse effects upon the setting of Oakendene Manor a Grade II Listed Building caused by the design and proximity of the proposed Onshore Substation.
 - Moderate adverse effects upon the setting of a further 23 Grade II Listed Buildings including Crateman's Farm, a Grade II* Listed Building and 2 Grade I Listed Buildings and the setting of Poling and Lyminster Conservation Areas because of landfall and the onshore cable route.
 - Minor adverse effect upon the setting of Twineham Court Farmhouse a Grade II Listed Building because of the extension to the existing NGET substation at Bolney.
 - Minor adverse effects upon the setting of a further 47 Grade II Listed Buildings, Buncton Chapel of All Saints (Grade I) and New Place Farm (Grade II*) and on Washington and Sullington Conservation Areas because of landfall and the onshore cable route.
- 3.14.8. In each of the above, the setting is considered in the ES [REP6-167] to contribute to the significance of the heritage assets.
- 3.14.9. The ES states [REP6-167] that the effects predicted for decommissioning would be the same as those predicted for the construction phase.
- 3.14.10. During operational and maintenance phase the ES identifies upon above ground heritage assets as:
- Major (significant) adverse effects upon the setting of Oakendene Manor a Grade II Listed Building and minor adverse upon Historic Landscape character because of the proposed onshore substation.
 - Moderate adverse effects upon the setting of Arundel Castle Scheduled Monument, Registered Parkland and Grade I, II and II* Listing Buildings because of the offshore substation and WTGs.
 - Moderate adverse effects upon the setting of 7 Grade II Listed Buildings including Band Stand and Climping Mill and 5 Conservation Areas (Brunswick Town, Regency Square, Old Town, Valley Gardens and East Cliff) because of the offshore substation and WTGs.
 - Minor adverse effect upon the setting of Twineham Court Farmhouse a Grade II Listed Building because of the extension to the existing NGET substation at Bolney.
 - Minor adverse effects upon the settings of a further 4 Grade II Listed Buildings and on 17 Conservation Areas because of the offshore substation and WTGs.
- 3.14.11. In each of the above, the setting is considered in the ES [REP6-167] to contribute to the significance of the heritage assets.
- 3.14.12. During construction phase the ES identifies adverse effects upon below ground heritage assets as:
- Major (significant) adverse effects on potential Neolithic flint mining, mortuary and settlement remains (including where these may be related to the scheduled prehistoric flint mine on Harrow Hill), and on Bronze Age and early medieval

archaeological remains within the South Downs, where these may be of national importance because of the onshore cable route.

- Within zones 1 to 3 negligible to moderate adverse effects upon paleoenvironmental deposits, iron age, roman roads, early medieval, post medieval agricultural, settlement and brick kiln remains, site of former WW2 Anti-Aircraft Artillery and unrecorded archaeology because of the onshore cable route.
- Moderate Adverse effects upon the setting of 5 Scheduled Monuments and Minor Adverse effects on the setting of 3 Scheduled Monuments including Muntham Court Romano- British Site because of the onshore cable route.

3.14.13. The ES states [REP6-167] that the effects predicted for decommissioning would be the same as those predicted for the construction phase in respect of below ground heritage assets.

3.14.14. During operational and maintenance phase the ES identifies effects upon below ground heritage assets as Moderate Adverse effects upon 2 Scheduled Monuments and Minor Adverse effects upon 8 Scheduled Monuments because of the offshore substation and WTGs.

Examination Issues

3.14.15. The Historic Environment was an initial principal issue in Annexe C of ExA Rule 6 letter [PD-006]. From written submissions/LIR including HE [RR-146], West Sussex Council [REP1-054], Mid Sussex DC [REP1-046], Brighton and Hove CC [REP1-042], and Arun DC [REP1-039] the principal issues considered in the Examination were as follows:

- Adequacy of the evidence relating to heritage asset Oakendene Manor as a result of the proposed onshore substation.
- The level of effect upon the settings of above-ground designated and non-designated heritage assets.
- The level of investigation and effect upon below ground Heritage Assets.

Adequacy of the evidence relating to heritage asset Oakendene Manor as a result of the proposed onshore substation

3.14.16. West Sussex CC in its PADS [AS-008] point 43 and LIR [REP1-054] raised concern that there was not sufficient evidence for the Onshore Substation for consideration and conclusions on level of harm upon the setting of Grade II Listed Building Oakendene Manor and that substantial harm to this Heritage Asset could not be conclusively ruled out.

3.14.17. At item 4 (v) ISH 1 [EV3-001 & EV3-006] West Sussex CC was asked to substantiate its concern on this matter and requested an assessment from an additional viewpoint from the southern eastern corner of the proposed onshore substation site in order to rule out substantial harm to the significance of Oakendene Manor through changes within its setting. The Applicant explained the approach of the ES Chapter 25 [REP6-153] to this evidence via ISH1 Action Point 6.

3.14.18. The Applicant responded at Deadline 4 providing the additional viewpoints SA9 to SA13 at Oakendene Manor [REP4-027]. In response to the ExA's FWQ [PD-012] at Deadline 5, West Sussex CC confirmed that substantial harm to the significance of Oakendene Manor through changes to its setting could now be ruled out [REP5-134] and agreed with the Applicant that less than substantial harm was likely to be

caused. However, West Sussex CC at Deadline 5 [REP5-134] stated that in its opinion, the level of harm would be at the higher end of the spectrum contrary to the Applicants view that it would be at the lower end of the spectrum.

- 3.14.19. West Sussex CC's contrary view was based upon the effect upon view(s) from the northwest towards Oakendene Manor from the gap in the hedge on PROW 1787 (viewpoint SA12) which it suggested was purposely designed into the grounds of the Manor and that it would be significantly affected by the proposed onshore substation because the view would be blocked by the proposed onshore substation. This viewpoint in West Sussex CC opinion contributes to the significance of this Heritage Asset.
- 3.14.20. West Sussex CC also raised concern regarding the assessment of harm at Deadline 5 [REP5-134] and suggested a more detailed and nuanced assessment to evidence their conclusion of less than substantial harm, this should be based on the specific impacts of the predicted changes to the asset's architectural and historic interest and overall significance. However, West Sussex CC acknowledged that such a further assessment would be unlikely to change the overall assessment of the level of effect.
- 3.14.21. No further issues on this specific matter were raised in the Examination.
- 3.14.22. CvR [REP1-089] and [RR-278], also raised concern with effects upon Oakendene Manor Grade II Listed Building due to the proximity of the proposed onshore substation. The Applicant responded to these at Deadline 1 [REP1-017] providing an explanation of the assessment of the impact of the Heritage Asset and the design principles to reduce and minimise the impact along with the proposed mitigation and how the mitigation was secured in the DCO. The ExA observed Oakendene Manor and its setting at USI 1 [EV1-001] and ASI [EV7-001].

The level of effect upon the settings of above-ground heritage assets

- 3.14.23. Above ground heritage matters were identified in LIR's Mid Sussex DC [REP1-046], Arun DC [REP1-039] and Brighton & Hove CC [REP1-041] which raised the following issues or referenced specific above ground Designated Heritage Assets:
- Grade II Listed Coombe House and Twineham Court Farmhouse;
 - Grade II 45-47 South Terrace;
 - Grade II and Grade II* Heritage Assets at Work Nos 8, 9 & 10; and
 - Grade II* Listed Madeira Terraces and Grade II Listed Bandstand.
- Grade II Listed Coombe House and Twineham Court Farmhouse*
- 3.14.24. In its LIR [REP1-046] Mid Sussex DC stated that in its view, the substation extension site at Bolney would affect the significance of Twineham Court Farmhouse and Coombe House by harming their setting, which results in a degree of less than substantial harm.
- 3.14.25. In regard to these Heritage Asset the Applicant responded at Deadline 2 [REP2-023] explaining that Coombe House was scoped out of the assessment because no change was anticipated during construction or operation due to intervening distance, buildings, topography and planting between the Asset and the Bolney extension site.

- 3.14.26. In regard to Twineham Court Farmhouse the Applicant [REP2-023] highlights that extension of the existing NGET substation is not anticipated to be perceptible from the asset although it is noted that the extension contributes to the erosion of the asset's wider agricultural setting. ES Chapter 25 [REP6-153] identifies a very low magnitude of change to the setting of Twineham Court Farmhouse, resulting in a Minor adverse residual effect during the construction and operation and maintenance phases of the onshore cable and extension of the existing National Grid Bolney substation, which would be not significant.
- 3.14.27. In ExA WQ1 HE 1.2 [PD-009] Mid Sussex DC was asked to comment upon the Applicant's scoping out of the Assets and the level of effect. In its response [REP3-070], Mid Sussex DC provided a detailed assessment of the Asset and its significance concluding that less than substantial harm at the lower end of the spectrum would be caused and at a lower level than Twineham Court Farmhouse. The Applicant responded at [REP4-079] agreeing with Mid Sussex DC description of significance of Coombe House.
- 3.14.28. The ExA did not need to question on this matter further in the Examination.
- Grade II 45-47 South Terrace*
- 3.14.29. In its LIR [REP1-039] Arun DC raised concern that 45-47 South Terrace had not been adequately assessed. In regard to this Heritage Asset the Applicant responded at Deadline 2 [REP2-025] explaining that the Heritage Assets were identified as 6 St Augustine's Road and was scoped out of the ES Assessment.
- 3.14.30. In ExA WQ1 HE 1.3 [PD-009] Arun DC was asked to comment upon the Applicant's response and Arun DC confirmed that the buildings have an association with the sea and would consider harm to be less than substantial. The Applicant responded at [REP4-079] stating that due to the distance of the WTG's of over 15km there would not be a significant effect on this Heritage Asset also noting that No 45-47 is set back from the seafront, with intervening built development.
- 3.14.31. The ExA did not consider it necessary to explore matters relating to this Heritage Asset any further in the Examination.
- Grade II and Grade II* Heritage Assets at work Nos 8, 9 and 10*
- 3.14.32. In its LIR [REP1-039] Arun DC raised concern regarding the visual effects of the trenchless crossing compounds and construction compounds at landfall upon a number of Heritage Assets including Grade II Listed Buildings Climping Mill, Kents Farm, Brookpit Manor and Brookpit Cottage, St John's Cottage, Decoy Cottage, New Place Farm, Church Farmhouse East, Church Farmhouse, Old Vicarage, Grade II* St Mary's Church and Lyminster Conservation Area.
- 3.14.33. ES Chapter 25 [REP6-153] identifies the effect upon these assets as no effect (Old Vicarage and St Mary's Church), minor adverse (Climping Mill, Brookpit Manor and Cottage, New Place Farm and Church Farmhouse) or moderate adverse (Lyminster Conservation Area, Kents Farm, St Johns Cottage, and Decoy Cottage) (not significant) through alteration of its setting as a result of the construction of the landfall and cable corridor.
- 3.14.34. In regard to these Heritage Assets the Applicant responded at Deadline 2 [REP2-021] explaining the assessment process and that there would be no change or a

very low or low magnitude of change during the temporary construction phase for these Heritage Assets.

- 3.14.35. The ExA was satisfied with the response and did not need to question the matter further.

Grade II Listed Madeira Terraces and Grade II Listed Bandstand.*

- 3.14.36. In its LIR [REP1-041] Brighton & Hove CC raised concern that the ES conclusion on effects on the heritage features along the coastline characterised as 'Not Significant' was not, in its view, correct.
- 3.14.37. The Applicant responded at Deadline 2 [REP2-025] explaining how the setting of heritage assets was considered in the ES at Chapter 25 [REP6-153]. In ExA WQ1 HE 1.7 [PD-009] Brighton & Hove CC was asked to confirm the specific heritage assets under dispute, and it confirmed it was particularly the Grade II* Madeira Terraces and Grade II Bandstand that they were concerned with.
- 3.14.38. At Item 10C of ISH2 [REP4-072] the Applicant confirmed that a response would be submitted at Deadline 4. The Applicant subsequently then acknowledged that views out to sea form part of the setting and makes a contribution to the significance of these designated heritage assets, but in its view this diminishes with distance explaining that the two Assets are 15km to 18km away and particularly in the case of Madeira Terrace there are features that currently detract from its setting [REP4-079].
- 3.14.39. The ExA observed Madeira Terraces, the Bandstand and their settings at USI 2 [EV1-002]. Brighton & Hove CC view [REP3-068] was that the magnitude of change was major/moderate with major/moderate effects Significant in EIA terms. The ES at Chapter 25 [REP6- 153] concluded that a low magnitude of change with moderate adverse effects and not significant EIA terms for East Cliffe Conservation Area including Madeira Terrace & Madeira Walk and Band Stand.
- 3.14.40. Several IPs in their RR's including CvR [REP1-089], [RR-398], and [RR-376] also raised concern with effects upon specific above ground Heritage Assets mainly in relation to proximity of the Assets to the OnSS and cable route as follows:
- Crateman's Farm Grade II Listed Building – proximity of cable route.
 - Impact upon Kent Street - many Listed Buildings and Historic Area.
 - Arundel Castle Grade I, Scheduled Monument and Grade II* Park and Gardens – Iconic status of the Castle.
- 3.14.41. ES Chapter 25 [REP6-153] identifies moderate adverse (not significant) effects upon Crateman's Farm through alteration of its setting as a result of the construction of the cable corridor. For Crateman's Farm the Applicant at Deadline 1 [REP1-017] explained the assessment process and that the Asset had been assessed within the ES acknowledging visibility of the temporary construction activities from the Listed Building.
- 3.14.42. The Applicant's response at Deadline 1 [REP1-017] did not include Heritage Assets at Kent Street, and the ExA tabled WQ1 HE 1.6 [PD-009] on this absence. The Applicant further responded at [REP3-051] explaining that Kent Street is not identified as a designated Heritage Asset but there are Listed Buildings within Kent Street that have been assessed in the ES for effects during the construction phase

with either a low magnitude of change (Kings Barn Grade II) or no effect (Vadgers and Potts Farmhouse Grade II) identified for these Heritage Assets. The ExA observed, Crateman's Farm and Kent Street and their settings at USI 1 [EV1-001], and ASI [EV7-001].

- 3.14.43. ES Chapter 25 [REP6-153] identifies moderate adverse (not significant) effects to Arundle Castle (Grade I, Scheduled Monument and Grade II* Park and Gardens) through alteration to setting as a result of the offshore substation and WTGs. The potential effects to Arundel Castle are also linked to seascape, landscape and visual matters but as the matter relates to the Heritage Assets Iconic status within the landscape and views out to sea it is considered within this section of the Recommendation.
- 3.14.44. The ExA observed Arundle Castle and its setting at USI2 [EV1-002] where the ExA, appreciated the significance of the Castle as a heritage asset and the contribution setting made to that significance. The ExA paid particular attention to the Castle's built form, landform, topography surrounding the Castle and the Castle's construction on a motte. The ExA acknowledges that views of the proposed offshore windfarm were only possible at a high level from one of the turrets and could not be seen from the ground level. The ExA were satisfied with the Applicants assessment in the ES and did not consider it needed to examine this matter.
- 3.14.45. In addition, the ExA WQ1 HE 1.1 [PD-009] questioned the magnitude of change to The Cottage and Green Common Farmhouse (Grade II Listed Buildings) based upon the optionality of trenchless crossing compounds. The Applicant confirmed at Deadline 3 [REP3-051] that the difference in the magnitude of change described within the Planning Statement and ES was an error and confirmed that the Planning Statement would be amended via an erratum. The Applicant confirmed that neither option for the trenchless crossing compounds in respect of either Heritage Asset would result in a significant adverse effect, the effect would be not significant and temporary.

Non-Designated Heritage Assets

- 3.14.46. In its LIR [REP1-039] Arun DC raised concern that non designated heritage assets at Nos 4, 8-95 South Terrace, 16 Granville Road and South Terrace Area of Character had not been adequately assessed.
- 3.14.47. In regard to these Non-Designated Heritage Assets the Applicant responded at Deadline 2 [REP2-021] explaining the scoping in of Heritage Assets process and that these non-designated Heritage Assets lie adjacent to the Littlehampton Conservation Area and that the magnitude of change and effect will be the equivalent of then Conservation Area or less as a result of local heritage significance. In ExA WQ1 HE 1.4 [PD-009] Arun DC were asked to comment upon the Applicant's response. Arun DC confirmed [REP3-067] the effect would be the same as the adjoining conservation area and level of harm less than substantial whilst noting that local heritage significance should not be used to reduce the effect.
- 3.14.48. At the close of the Examination the above matters in regard to Non-Designated Heritage matters were agreed with Arun DC in their PADS [REP6- 276].

The level of investigation and effect upon below-ground heritage assets.

- 3.14.49. Below-ground heritage matters were identified in several RR's [RR-073] and SDNPA and West Sussex CC LIR'S which raised the following specific below ground Heritage Assets:
- The Scheduled Monument and Martin Down style enclosure at Harrow Hill.
 - The Area between Blackpatch Hill and Harrow Hill has high potential for unrecorded archaeology of national significance.
 - The Muntham Court - Scheduled Monument.
- 3.14.50. The concerns from the local authorities in the Blackpatch Hill and Harrow Hill areas were that risk to known highly significant archaeology have not been appropriately weighted, investigated and assessed through the final assessment of the Proposed Development. Essentially SDNPA and West Sussex CC considered that intrusive field investigations should have been undertaken pre-consent so that the significance of the potential archaeology of national significance could be accurately described. West Sussex CC and SDNPA quoted the R (Low Carbon Solar Park 6 Limited) v Secretary of State for Levelling Up Housing and Communities & Uttlesford District Council [2024] EWHC 770 (Admin) high court judgement as collaboration of their approach to this matter.
- 3.14.51. The Applicant responded to this issue at item 8 (a) ISH2 [EV5-001 & EV5-016] including the post hearing submission [REP4-072] stating that the ES assessment approach was a desk-based study with LIDAR mapping and aerial photography as well as geophysical surveys and where assessment had identified complex archaeology targeted trial trenching was undertaken. The Applicant concluded that the approach was proportionate and similar to other DCO projects such as Southampton to London Pipeline. The Applicant also made the point that any trial trenching would effectively be speculative to identify areas of unknown archaeological assets rather than targeted to further investigate anomalies. The above high court judgement was submitted into the Examination and the Applicant provided commentary on the consequence of this judgement for the Proposed Development via ISH2 Action point 59 submission Appendix B [REP4-074].
- 3.14.52. The ExA observed Blackpatch Hill/Harrow Hill area and Muntham Court and its setting at USI 2 [EV1-002]. The concern from SDNPA and West Sussex CC at ISH2 including the post hearing submission [REP4-085 & REP4-086] regarding Muntham Court was the construction of the access A28 in close proximity and the effect upon potential unrecorded archaeology associated with the Scheduled Monument. The Applicant's response to this issue at ISH2 including the post hearing submission [REP4-072] was that the route would be passing to the west of Scheduled Monument, and that works comprised a temporary construction access route without the need to excavate and the area would be subject to further investigations secured by Requirement 19 of the draft DCO. The Applicant also provided a further explanation about the effects of vibration via action point 51 submitted at Deadline 4 [REP4-074].
- 3.14.53. Nevertheless, it remained the case that the Applicant took a precautionary, worst-case approach in the ES, identifying this as a significant effect, though it would represent less than substantial harm and West Sussex CC and SDNPA considered that field investigation should have taken place. Despite this disagreement on the matter the Applicant and West Sussex CC/SDNPA agreed suitable wording for

commitment 225 of the Commitments Register [REP6-227], Requirement 19 of the Recommended DCO and agreed the Outline Onshore WSI [REP5-070].

ExA's Findings

- 3.14.54. The Planning (Listing Buildings and Conservations Areas) Act 1990 and the Infrastructure Planning (Decisions) Regulations 2010 requires when deciding an application:
- Which affects a Listed Building, or its setting regard must be had to the desirability of the preserving the Listed Building or its setting or any features of special architectural or historic interest which it possesses.
 - Relating to a Conservation Area regard must be had to the desirability of preserving or enhancing the character or appearance of the area.
- 3.14.55. NPS EN-1 2011 states the following regarding the historic environment:
- Recognises that energy infrastructure has the potential to result in adverse impacts on the historic environment.
 - The Secretary of State should take into account the particular nature of the significance of the heritage assets and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between conservation of that significance and proposals for development.
 - There should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be. Loss affecting any designated heritage asset should require clear and convincing justification.
 - Any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss.
- 3.14.56. Further, NPS EN-1 2024 continues the theme of the 2011 NPS's except for paragraphs 5.9.28 and 5.9.32 wherein:
- The Secretary of State should give considerable importance and weight to the desirability of preserving all heritage assets (Note: desirability is now instead of presumption in favour of conservation from the previous version) Any harm or loss of significance of a designated heritage asset (from its alteration or destruction, or from development within its setting) should require clear and convincing justification.
 - Where the harm to the significance of the designated heritage asset will be less than substantial, (Note: new scale not in previous version) this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
- 3.14.57. The NPPF at paragraphs 205 to 209 requires great weight to be given to the asset's conservation (the more important the asset, the greater the weight should be) irrespective of whether the harm amounts to substantial harm, total loss or less than substantial harm to its significance and where:
- Substantial harm to (or total loss of significance of) a designated heritage asset then consent should be refused unless it can be demonstrated that the

substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm.

- Substantial harm to or total loss of significance of a designated heritage should require clear and convincing justification.
- Less than substantial harm to the significance of a designated heritage asset is identified then this harm should be weighed against the public benefits of the proposal.
- Non designated heritage assets are directly or indirectly effected, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

3.14.58. The ExA welcomed both the Applicant's submission of additional viewpoints to evidence the effect upon Oakendene Manor and West Sussex CC's agreement after consideration of these viewpoints, that substantial harm to this Heritage Asset could be ruled out.

3.14.59. At the close of the Examination, the ExA was satisfied that there was sufficient evidence to conclude on the level of harm to Oakendene Manor a Grade II Listed Building.

3.14.60. At the close of the Examination the ExA were satisfied with the Applicant's responses to questions and matters in relation to the Designated Heritage Assets within the historic environment. The ExA were also satisfied that the Applicant has scoped out of the assessment of Heritage Assets in appropriate circumstances.

3.14.61. Except for the effect upon Oakendene Manor, the ExA is satisfied that there would be no potential significant adverse effects upon above ground Designated Heritage Assets. The reasoning for which is the proposed design and mitigation of the Proposed Development coupled with distance from the Proposed Development to the Heritage Assets and intervening built form and natural screening. Where effects have been identified the ExA are satisfied that the effects would be indirect effects upon the setting which contribute to the significance of Heritage Assets and the level of harm would be less than substantial for the individual heritage assets including Oakendene Manor.

3.14.62. At the close of the Examination the matters regarding Non-Designated Heritage Assets were resolved with Arun DC and the ExA has no reason to reach a different conclusion on Non-Designated Heritage Assets.

3.14.63. The ExA notes that SNDPA and West Sussex CC did not agree with the Applicant on the below ground heritage assets matter. However, the ExA welcomes agreement upon the wording of Commitment 225, Requirement 19 and the Outline Onshore WSI. Consequently, the ExA is satisfied that:

- Commitment 225 ensures that, through investigation, if archaeological remains are discovered then, they can either be avoided through design and engineering solutions, preserved in situ or preserved by record commensurate with their significance.
- That the Outline Onshore WSI forms an acceptable basis for the final Onshore WSI to be derived from.
- That Requirement 19 of the Recommended DCO adequately secures the final Onshore WSI and its approval by the relevant authorities.

such that this package mitigates potential impacts upon below ground heritage assets.

- 3.14.64. The ExA draws some comfort from West Sussex CC's agreement and SDNPA's support to the wording of the mitigation package and confirming that it goes some way to mitigate their concerns.
- 3.14.65. Where not discussed in this section, the ExA is satisfied with the Applicant's assessment in the ES, or subsequently satisfied with the Applicant's responses to questions and matters in relation to the historic environment.
- 3.14.66. Overall, the ExA is satisfied, from the evidence submitted, that the Proposed Development has been adequately assessed in the ES, and that appropriate mitigation is set out in the Commitments Register and is secured within the Recommended DCO. The ExA agrees that the assessment of residual effect upon the historic environment is major adverse in a limited number of cases arising from the Proposed Development, which could cause harm to heritage receptors within the Proposed Development.
- 3.14.67. However, for the reasons given above, the Proposed Development would amount to major adverse effect in a limited number of cases, and thus harm to heritage assets, taken both individually and cumulatively. It is the ExA judgement that such harm would be less than substantial given the proximity between the infrastructure and the asset itself and taking into account mitigation secured through the Recommended DCO.
- 3.14.68. In applying paragraph 208 of the Framework in cases where less than substantial harm is identified, the harm should be weighed against the public benefits of the proposal. The ExA will undertake this balance in section 5 of this Recommendation, once the planning effects are known in their totality and weighed against the need for the Proposed Development and other matters.

Conclusions

- 3.14.69. The ExA is satisfied that the Proposed Development has been designed to reduce the impact on historic environment by avoiding known high value heritage assets, where practicable. The Applicant has identified major adverse effects (significant) would occur because of direct physical disturbance to archaeological remains within the National Park and indirect effects on the setting of heritage asset namely Oakendene Manor, the setting of which contributes to its significance.
- 3.14.70. The ExA considers that, of the heritage assets identified by the Applicant as being affected by the Proposed Development, a significant number are sufficiently distant from the Proposed Development, and the ExA is satisfied that the significance of those assets would not be undermined.
- 3.14.71. Of the heritage assets identified by the Applicant that would receive a potentially significant adverse effect following mitigation, the ExA is satisfied that the Applicant's proposed design, together with the mitigation measures proposed, would moderate the overall effects as far as practicable. Accordingly, the ExA is satisfied that the heritage assets taken individually would be subject to less than substantial harm at the lower end of the spectrum from the Proposed Development.
- 3.14.72. Taking all matters together, the ExA concurs with ES Chapter 25 [REP6-153] 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 archaeological remains in

the National Park caused by construction of the cable corridor. The ExA find that in respect to the NPPF, the significance of effect would amount to less than substantial harm.

- 3.14.73. The ExA is satisfied that adequate mitigation is secured within the Recommended DCO, with specific regard to landscaping, which would over time establish and thus reduce the scale of the effects from the Proposed Development on heritage assets and protect their significance.
- 3.14.74. The ExA concludes that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.14.75. The ExA attaches a Little Negative weight to the historic environment matters in the planning balance.
- 3.14.76. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to the historic environment and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011. The application of paragraph 208 of the NPPF and the need to weigh the identified less than substantial harm against the public benefits will be done in Section 5.3 of this Recommendation below.

3.15. TRAFFIC AND ACCESS

The Applicant's Case

- 3.15.1. ES Volume 2, Chapter 23: Transport [REP6-149] provides an assessment of the Proposed Development's effects on traffic and access from construction, operation (including maintenance) and decommissioning. The assessment should be read in conjunction with Volume 2, Chapter 4: The Proposed Development [REP6-171].
- 3.15.2. The following appendices and documents are also relevant:
 - Volume 2, Chapter 32: ES Addendum [REP6-169].
 - Volume 4, Appendix 23.1 Abnormal Indivisible Load (AIL) assessment [REP6-206].
 - Volume 4, Appendix 23.2 Traffic Generation Technical Note [REP6-208].
 - Outline Operational Travel Plan (OOTP) [APP-227].
 - Outline Construction Traffic Management Plan (OCTMP) [REP6-231].
 - Outline Construction Workforce Travel Plan (OCWTP) [REP3-031].
 - Outline Public Rights of Way Management Plan (OPRWM) [REP3-033].
- 3.15.3. The assessment of potentially significant environmental effects was undertaken in accordance with the Institute of Environmental Assessment (1993) publication Guidance Notes No.1: Guidelines for the Environmental Assessment of Road Traffic (GEART). GEART 1993 identifies the following environmental effects that can occur as a result of traffic associated with the Proposed Development:
 - Severance: the separation of people from places and other people and places or the impediment of pedestrian access to essential facilities.
 - Driver delay: traffic delays as a result of the Proposed Development traffic.

- Pedestrian amenity: the effect on the relative pleasantness of a pedestrian journey as a result of changes in traffic flow, traffic composition and pavement width / separation from traffic.
- Pedestrian delay: the ability of people to crossroads as a result of changes in traffic volume, composition and speed, the level of pedestrian activity, visibility and general physical conditions of the Proposed Development. Consideration is given to the effects on Public Rights of Way
- (PRoW) users due to the closure and diversion of PRoWs.
- Fear and intimidation: experienced by people as a result of an increase in traffic volume and its proximity or the lack of protection caused by such factors as narrow pavement widths.
- Accidents and safety: the risk of accidents occurring where the Proposed Development is expected to produce a change in the character of traffic.

3.15.4. GEART 1993 states that:

“The detailed assessment of impacts is...likely to concentrate on the period during which the absolute level of an impact is at its peak, as well as the hour at which the greatest level of change is likely to occur.” (Paragraph 3.10).

3.15.5. To assess the impact at its peak, the likely percentage increase in traffic was therefore determined by comparing estimates of traffic generated by the Proposed Development with future predicted baseline traffic flows on the road links within the assessment area.

3.15.6. Two distinct areas were identified for the assessment of onshore impacts and onshore impacts of offshore works:

- Study Area 1 (Onshore Cable Route) is shown in Figure 23.5, Volume 3 of the ES [REP6-149] and the highway links assessed in Table 23-8 of [APP-107].
- Study Area 2 (Newhaven) is shown in Figure 23.6, Volume 3 of the ES [REP6-149] and the highway links assessed in Table 23-9 of [APP-107].

3.15.7. Roads within the strategic road network (SRN) that are proposed to be used for access for which NH is the highway authority, include the A23 and A27. Roads on the local road network for which West Sussex CC is the highway authority include the A24, A26, A259, A272, A280, A281, A283, B2109, B2116, B2117 and B2118 and connecting roads.

3.15.8. To provide a representative forecast of construction traffic the following complementary approaches were adopted:

- A realistic worst-case peak week of construction traffic was calculated based on the week with the greatest sum of vehicle movements generated by all accesses across the network.
- Peak construction traffic weeks for each of the three construction sections (Section 1 at the southern end, Section 2 in the middle and Section 3 at the northern end) were calculated.
- Annual Average Weekday Traffic flows were calculated for each link, for each year of the construction period, providing a comprehensive overview of the project impact across Study Area 1 over the duration of the construction period.

3.15.9. The traffic generation methodology is explained in full in Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the ES [REP6-208].

- 3.15.10. GEART 1993 then provides two rules that are used to establish whether an environmental assessment of traffic effects should be carried out on receptors:
- Rule 1: Include roads where traffic flows are predicted to increase by more than 30% (or where the number of HGVs is predicted to increase by more than 30%).
 - Rule 2: Include any specifically 'sensitive' areas where traffic flows are predicted to increase by 10% or more.
- 3.15.11. The sensitivity of each highway link included in the assessment was assigned a sensitivity in accordance with GEART 1993, based on professional judgement and related to the proximity, volume and type of receptors along the highway link.
- 3.15.12. Using Rule 1 and Rule 2 and the sensitivity of the receptors indicates the magnitude of change in environmental effects and helps identify levels of significance. The indicators to assess the magnitude of change were based on advice included within GEART 1993 and professional judgement. The significance of a likely transport effects was derived by considering the sensitivity of the receptor against the magnitude of change.
- 3.15.13. According to GEART 1993, predicted traffic flow increases below 10% are generally not considered to be significant as daily variations in background traffic flow may fluctuate by this amount. Changes in traffic flows below this level were, therefore, assumed not to result in significant environmental effects and were not assessed further as part of the study.
- 3.15.14. Details of the GEART 1993 threshold applied to each highways link is set out in Section 23.9 of ES Chapter 23 [REP6-149] and Table 23-29 provides details of the highway links and the nature of the receptors within the vicinity of each of them for Study Area 1 and Table 23-30 for Study Area 2.
- 3.15.15. In terms of transport and access impacts, the receptors were the users of the roads within the study area and the locations (towns/villages/AQMA) through which those roads pass.
- 3.15.16. The sensitivity of each highway link included in the assessment was assigned a sensitivity in accordance with GEART 1993. This was based on professional judgement and related to the proximity, volume and type of receptors along the highway link. Table 23-31 of ES Chapter 23 [REP6-149] summarises the rationale used to determine the sensitivity against the corresponding receptors.
- 3.15.17. GEART 1993 recognises that professional judgement should be used as part of the assessment and states the following:
- “For many effects there are no simple rules or formulae which define thresholds of significance and there is, therefore, a need for interpretation and judgement on the part of the assessor, backed-up by data or quantified information wherever possible. Such judgements will include the assessment of the numbers of people experiencing a change in environmental impact as well as the assessment of the damage to various natural resources.”* (Paragraph 4.5, GEART 1993)
- 3.15.18. Based on GEART 1993 Rule 1 and Rule 2 and the sensitivity of the receptors, Table 23-32 of ES Chapter 23 [REP6-149] shows the magnitude of change applied to the environmental effects to help identify levels of significance. The indicators to assess

the magnitude of change were based on advice included within GEART 1993 and professional judgement. These are shown in Table 23-32.

3.15.19. For the purposes of the assessment major and moderate effects were considered 'Significant', whilst minor and negligible effects were considered 'Not Significant'.

3.15.20. The following activities or impacts were scoped out of the assessment:

- Onshore - Operation and maintenance activities resulting in potential impact on roads and users of these routes (small number of vehicle movements that would not result in any significant effects - Appendix 5.1: Planning Inspectorate's Scoping Opinion, Volume 4 of the ES [APP-125]).
- Onshore – Decommissioning of underground cable and landfall site and potential impacts on roads, PRoWs and users of these routes (the onshore cable and / or landfall site would be left in-situ during decommissioning of the Proposed Development and as such no traffic generation would result).
- Offshore – Construction phase (any associated traffic would be distributed across many different ports and as a result would not have a significant effect in any specific location).
- Offshore – Decommissioning phase (as for construction phase).
- Impact of Hazardous Loads required on the Proposed Development (none proposed as part of the Proposed Development).
- Impact on rail service provision (trenchless crossings proposed so not significantly affected).
- Impact on bus service provision (not considered to be significantly affected).

3.15.21. A range of environmental measures within the Commitments Register [REP6-227] which relate to transport are embedded as part of the Proposed Development to remove or reduce significant environmental effects as far as possible. Key measures include:

- routing of HGVs during the construction period to avoid Air Quality Management Areas, the A24 through Findon and major settlements, such as Storrington, Cowfold, Steyning, Wineham, Henfield, Woodmancote and other smaller settlements, where possible (C-157).
- main rivers, watercourses, railways and roads that form part of the Strategic Highways Network would be crossed by HDD or other trenchless technology where this represents the best environment solution and is financially and technically feasible (C-5).
- an OCTMP [REP6-231] which sets out the approach to managing and minimising the impact of the construction traffic on the transport network (C-201).
- an Outline Public Rights of Way Management Plan (OPRoWMP) [REP3-033] which sets out the approach to managing the use of public rights of way (PRoW) during construction (C-202).

3.15.22. The Trip End Model Presentation Program (TEMPro), developed by the Department for Transport (DfT) for providing traffic growth projections was used in the assessment of the impact of the Proposed Development. This approach to forecasting traffic growth taking into account the traffic associated with all cumulative and anticipated development within the local plan was agreed with West Sussex CC and NH during consultation. No other committed developments in addition to those already taken into consideration within the TEMPro forecasts were

identified that are anticipated to overlap with the Proposed Development and therefore no cumulative transport effects are anticipated.

- 3.15.23. Transboundary effects arise when impacts from a development within one European Economic Area (EEA) states affects the environment of another EEA state(s). No transboundary effects relating to onshore transport were identified as part of the screening exercise.
- 3.15.24. An inter-related effects assessment considered LSE from multiple impacts and activities from the construction, operation and maintenance and decommissioning phases of the Proposed Development on the same receptor, or group of receptors Chapter 30: Inter-related effects, Volume 2 of the ES [REP6-165]. The assessment concluded that following the implementation of the embedded environmental measures, there are no significant inter-related effects on receptors considered in the ES. It is not anticipated that any further receptor-led inter-related effects would occur that are of any greater significance compared to the impacts considered already within the ES chapters, and it is not anticipated that project-lifetime inter-related effects of greater significance than those considered in isolation for each individual phase.
- 3.15.25. Table 23-45 of Volume 2, Chapter 23: Transport, of the ES [REP6-149] provides a summary of the assessment of significant effects, any relevant embedded environmental measures and the residual effects on transport receptors. Table 23-28 of the same document provides a description of the embedded environmental measures and sets out how they would be secured.
- 3.15.26. Overall, the ES assessment found that with the embedded environmental measures the residual effects of the Proposed Development would be Negligible (Not Significant).
- 3.15.27. In addition to Table 23-45, Chapter 32: ES Addendum, Volume 2 of the ES [REP6-169] provides a summary of residual effects related to the construction traffic peak week sensitivity test which should be read in conjunction with ES Volume 2, Chapter 23: Transport [REP6-149].
- 3.15.28. Table 2-29 in Chapter 32: ES Addendum, Volume 2 of the ES [REP6-169] identifies significant effects for two highway links (Michelgrove Lane and Kent Street) in relation to pedestrian amenity, pedestrian delay and fear and intimidation as a result of the construction traffic peak week sensitivity test.
- 3.15.29. These conclusions however are based on the absolute peak week of construction activities at each receptor and as identified in paragraphs 2.4.65 and 2.4.73 these peak periods do not occur over a long period. For example, on Michelgrove Lane construction traffic flows would remain above 50 construction vehicles in total per day and HGV flows would remain above 40 HGVs per day for only ten weeks of the construction programme. Similarly, on Kent Street, construction traffic flows would be above 50 per day for only one week and HGV flows would remain above 40 HGVs per day for two weeks. In addition, the Applicant has produced traffic management strategies for both Michelgrove Lane and Kent Street (Appendix D of the OCTMP [REP6-231]) to facilitate safe access by construction traffic and minimise disruption to residents and users of each link.
- 3.15.30. Taking these factors into account, the ES concluded that the significant effects identified within this chapter would be short term only.

Examination Issues

3.15.31. The main issues in the Examination were:

- The use of up-to date transport assessment methodology.
- The impact of construction traffic on roads in the vicinity of Cowfold.
- The use of Dragon's Lane as an operational access.
- Access along King's and Moatfield Lanes during construction.
- Sufficiency of justification and supporting information for proposed temporary and permanent access arrangements.
- Construction accesses A-26 (Michelgrove) and A-28 (Tolmare Farm) in the SDNP.
- The impact of construction traffic accessing Washington Compound on the SDNP.
- The construction, operation or maintenance of sites associated with the Proposed Development adjacent to or in close proximity to the SRN and the implications for the SRN.

3.15.32. It should be noted that in Volume 2, Chapter 23: Transport of the ES [REP6-149] construction and operational accesses required for the Proposed Development are labelled 'A' followed by a dash and then a number (e.g. A-21). Figure 23 14a-f of Volume 3, Chapter 23: Transport – Figures (Part 2 of 4) of the ES [APP-108] shows all the accesses and their locations. The ExA refers to such accesses in this Section of the Recommendation and they should not be confused with 'A' roads.

The use of up-to date traffic assessment methodology

3.15.33. The ExA noted at the start of the Examination that the transport assessment methodology used in the ES was based on GEART 1993. These guidelines were replaced by the Institute with updated guidance called "The Environmental Assessment of Road Traffic" in July 2023 (EATM 2023). This was also commented on by West Sussex CC in its RR [RR-419].

3.15.34. The ExA raised this matter at ISH1, [REP1-033] and requested that the Applicant provide a note on the principal differences between the GEART 1993 and EATM 2023 documents and whether there would be difference in the outcome of the assessment in the ES if the latter was used at Deadline 2 [EV3-020, Action 8].

3.15.35. The note provided at Deadline 2 [REP2-017], concluded that the assessments carried out for GEART 1993 met the requirements of EATM 2023, apart from receptor "fear" and "intimidation" for which new assessments were carried out. No new significant environmental effects were identified because of these updated assessments. Further, the Applicant concluded that use of EATM 2023, removes the significant effects in relation to fear and intimidation identified within Chapter 32: ES Addendum of the ES [REP1-006] for Michelgrove Lane and Kent Street.

3.15.36. West Sussex CC in its Deadline 3 response [REP3-073] confirmed that they were satisfied that considering the two rules applied to determine the scope of the study area remained unchanged between the GEART 1993 and EATM 2023 that the scope of the Applicants assessment remained acceptable.

The impact of construction traffic on roads in the vicinity of Cowfold

3.15.37. Of the 425 RRs received, 152 were related to an aspect of the Proposed Development's impact on traffic and access. Of those, 69 raised matters specifically

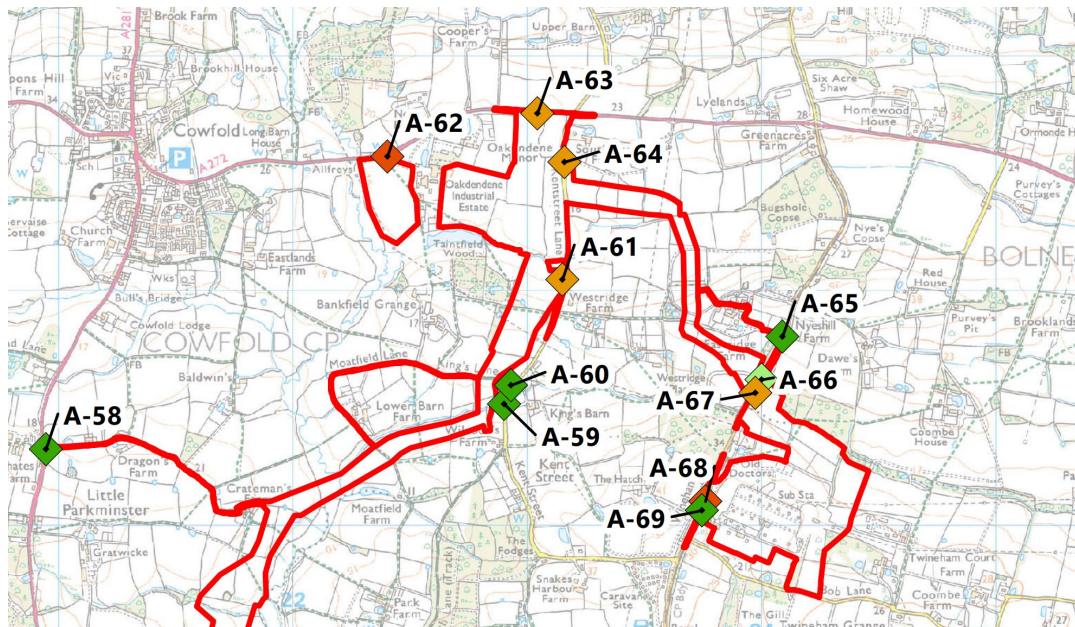
on the potential impact of construction traffic on roads in the vicinity of Cowfold. A summary of the substantive RRs on this topic is contained in Appendix A3. The issues raised included:

- Increased congestion on the A272 due to construction vehicles, causing delays, disruption to businesses and safety issues.
- Use of unsuitable single-track lanes by construction and other vehicles due to congestion on A272.
- Use of Kent Street by construction vehicles to access construction accesses A61 and A64.
- The Impact of construction traffic on the Cowfold AQMA.

3.15.38. The impact of construction traffic on the Cowfold AQMA is addressed in Section 3.16, (Air Quality), of this Recommendation.

3.15.39. Figure 14 below, taken from ES Chapter 4 figures [APP-076] illustrates the roads and access numbers which are discussed in some detail below.

Figure 14 - Access point to the Oakendene Substation site and surrounding area including Kent Street [APP-076]



3.15.40. At ISH1 [REP1-033], having reviewed all the evidence in the RRs and listened to the oral representations made at OFH1 [REP1-032], the ExA asked the Applicant the following with regard to the potential impact of construction traffic on the A272 (the road to the north of the proposed substation site) and Kent Street (the single-track lane to the east of the proposed substation site which the Applicant proposes to use to access A-64 and A-61) [EV3-001, item 4(i)]:

- To respond to the concerns of residents about construction traffic causing congestion on the A272 at Cowfold and the safety of the proposed Oakendene West Compound (A-62) and Oakendene Substation Compound (A-63) junctions.
- Whether the Applicant intended to carry out road safety audits.
- What the proposed strategy is to avoid impacts on the A272 as a result of construction traffic using unsuitable routes such as Picts Lane;

- In respect of the two construction accesses proposed off Kent Street, to clarify the extent of use of these, the traffic management measures proposed and the rationale for not including these in the transport assessment; and
- Whether the Applicant had considered minimising the disruption to Kent Street by servicing construction areas accessed by A-61 and A-64 from another access such as A-63, the access from the A272 into the substation construction compound and maximising the use of on-site construction haul roads.

3.15.41. The ExA under agenda item 4(ii), Cowfold AQMA, also asked the Applicant whether the use of haul roads from the Oakendene Substation Compound access (A-63) to areas of construction to be serviced from accesses A57, A56, A53 and A52 off the A281, thus reducing the number of construction vehicles travelling through Cowfold had been considered.

3.15.42. The Applicant confirmed that [REP1-033]:

- Access A-63 would be designed in accordance with the Design Manual for Roads and Bridges (DMRB), considering visibility, traffic flow and construction vehicle movements.
- Safety audits would be conducted particularly at Oakendene West and Washington Compound accesses. The Applicant is liaising with the Highway Authority West Sussex CC on road safety and will implement any recommendations from independent audits.
- Lanes north of the A272 are excluded from prescribed construction access routes. Monitoring would be conducted throughout the construction period, with enforcement and corrective action set out in the OCTMP.
- Kent Street a single-track road is proposed to be used as a construction access route (providing access to construction accesses A-61 and A-64) and traffic management strategies are under review due to concerns about safety and suitability.
- The potential use of haul roads to access construction sites, instead of Kent Street or the A272 through Cowfold is limited due to physical constraints such as trenchless water crossings and flood zones.

3.15.43. The ExA requested that the Applicant provide the following at Deadline 1 [EV3-020 Actions 14, 16 and 17]:

- A plan demonstrating why areas serviced from A-61 and A-64 off Kent Street could not be serviced by a haul road from Access A-63 Oakendene substation compound;
- A note which explores the feasibility of HGVs accessing the areas serviced by A-57, A-56, A53 and A-52 via haul roads south from A-63 or North from A-50; and
- Light goods vehicle (LGV) and workforce vehicle numbers travelling through Cowfold AQMA to A-57, A-56, A-53 and A-52 and what these equate to in numbers and percentage in comparison to predicted traffic flows without the Proposed Development.

3.15.44. The ExA also requested that the Applicant provide a Traffic Management Plan for Kent Street which considers, or signposts, an assessment of the effect of the construction egress on its safety and rural character.

3.15.45. The Applicant provided its response to RRs at Deadline 1 [REP1-018]:

- Traffic Routing and Mitigation - the Applicant highlighted the fact that it had introduced several embedded environmental measures to minimise the impact of construction traffic, as detailed in the Commitments Register and OCTMP. These measures include.
- Commitment C-157: HGV routing during construction would avoid major settlements like Cowfold, Storrington, Henfield and other smaller settlements where possible.
- Commitment C-158: HGV routing would avoid the Cowfold AQMA where possible, reducing traffic in areas with high air pollution.
- Impact on traffic flow - while efforts would be made to avoid Cowfold the Applicant acknowledged that approximately 25% of HGV traffic may still pass through Cowfold due to specific access needs at Oakendene, Kent Street and Wineham Lane.
- Traffic Flow Estimates During Peak Construction.
- A281 South of Cowfold - an increase of 12 HGVs per day (7.5% increase) and 71 LGVs per day (1.1% total increase in traffic flow).
- A272/ A281 in Cowfold Village Centre - an increase of 39 HGVs per day (3.5% increase) and 154 LGVs per day (0.7% total increase).
- A272 Station Road (West of Cowfold) - similar increases of 39 HGVs (4.6%) and 154 LGVs (0.9% total increase).
- A272 Bolney Road (East of Cowfold) - an increase of 39 HGVs (5.5%) and 147 LGVs (0.8% total increase).

- 3.15.46. With regard to Kent Street, the Applicant confirmed [REP1-018] that this single-track road would be used by construction traffic to access construction accesses A-61 and A-64. The Applicant also confirmed that given the road was narrow it was reviewing several options for traffic management, including speed limit reductions, the creation of passing places, or the use of bankmen to manage traffic flow and its aim was to ensure safe access and minimise disruption. The Applicant was in discussions with West Sussex CC to finalise traffic management strategies which would be secured through a detailed Construction Traffic Management Plan (CTMP) and approved by the highway authority before construction begins.
- 3.15.47. In respect to reduction of traffic through Cowfold, the Applicant highlighted [REP1-018] that through Commitments C-157 and C-158 [REP6- 226] it aimed to remove up to 22,000 two-way HGV trips from the centre of Cowfold during construction and that this would significantly reduce the potential traffic impact on the village.
- 3.15.48. In respect to potential air quality and traffic on the AQMA, the Applicant noted [REP1-018] that it was working to limit traffic through Cowfold AQMA to reduce potential air pollution impacts. While some traffic may still pass through this would be kept to a minimum with construction traffic being routed along less congested roads like the A27 and A23.
- 3.15.49. Overall, the Applicant's response to RRs focused on mitigating the impacts of construction traffic on Cowfold and the surrounding areas, particularly through routing measures and traffic management strategies. The Applicant stressed that the increase in traffic indicated by its traffic modelling would not result in significant effects on most traffic receptors in Cowfold, though further work was being done on the use of Kent Street and potential air quality impacts in Cowfold.
- 3.15.50. At Deadline 1, the Applicant also submitted into the Examination:

- Volume 2, Chapter 32: ES Addendum [REP1-006] following a review of the ES conclusions and RRs on traffic. The Addendum, a final version of which was submitted at the end of the Examination [REP6-169], includes a sensitivity test considering the peak week for traffic at each receptor location. Whilst recognising that this is an unrealistic scenario for consideration of the overall worst-case, due to those weeks occurring at different weeks in the programme, this sensitivity test provides a more localised and refined impact assessment and confirms the worst-case construction traffic impact for all receptor locations within the Study Area. The results of the additional transport sensitivity test have also been considered in relation to air quality and noise and vibration. Using this methodology, the Addendum identified significant environmental effects on Michelgrove Lane (receptor P) and Kent Street (receptor U) in relation to pedestrian amenity, pedestrian delay and fear and intimidation. However, the Applicant maintains that these effects would be for a short period only.
- A response to ISH1 [EV3-020 Actions 14 and 16] - regarding the potential use of haul roads to minimise the number of construction vehicles using Kent Street and travelling on the A272 through Cowfold [REP1-022]. The Applicant ruled this out on the basis of physical and environmental barriers and mitigation, nuisance from landowners and residents and construction efficiency.
- A response to ISH1 [EV3-020 Action 17] - regarding LGV and workforce vehicle numbers travelling through Cowfield AQMA to A-57, A-56, A-53 and A-52 and what these equate to in numbers and percentage in comparison to predicted traffic flows without the Proposed Development [REP1-018].

- 3.15.51. Both Horsham DC and West Sussex CC provided LIRs at Deadline 1 raising issues in relation to the impact of construction traffic on roads in the vicinity of Cowfold [REP1-054 and REP1-044].
- 3.15.52. Horsham DC [REP1-054] was supportive of the questions asked by the ExA on this issue at ISH1 while deferring to the views and opinions of West Sussex CC as highway authority. In its response to Horsham DC at Deadline 2 [REP2-022] the Applicant maintained that a detailed assessment of the transport effects of construction traffic had been completed in the ES and the conclusion was that the proposed the Proposed Development would generate only one significant transport effect in Horsham District on Kent Street, which would be limited to a short term peak construction period.
- 3.15.53. West Sussex CC's [REP1-044] highlighted issues with regard to: the use of Kent Street as a construction access; design of the new access from the A272 into the Oakendene Substation site which should be agreed during the course of the Examination; congestion on the A272 and routing strategy for construction traffic; the increase in use of the existing Oakendene West Compound access by slow moving HGVs and the safety of junctions along the A272 to be used by construction traffic.
- 3.15.54. The Applicant's response to West Sussex CC's LIR [REP2-022], noted the ongoing discussions with West Sussex CC on a traffic management strategy for the use of Kent Street as a construction access and safety of junctions off the A27; and OCTMP measures to reduce the number of construction vehicles travelling through Cowfold and prevent use of unsuitable lanes to the north of the A272.

- 3.15.55. At Deadline 2, the Applicant also responded to WRs [REP2-030]. Relevant to the issue of the impact of construction traffic on roads in the vicinity of Cowfold the Applicant responded to a representation from the community group CvR [REP1-089]. With respect to the Group's comments on:
- Methodology and Assessments – the Applicant confirmed that the transport effects were assessed using the GEART 1993. The EATM 2023 guidelines were also reviewed, concluding that the updated methodology wouldn't result in significant changes to the assessment's outcome.
 - Traffic Management Commitments - the Applicant explained that the Proposed Development includes measures to mitigate traffic impacts, such as avoiding HGV traffic through major settlements like Cowfold. Specific routes were outlined to minimise traffic in sensitive areas, such as the Cowfold AQMA.
 - Peak Traffic Estimates – the Applicant provided detailed estimates of traffic increases during peak construction periods. For example, an HGV increase of up to 39 vehicles per day was predicted in some areas. Despite these increases, the Applicant concludes that the overall traffic flow impact on Cowfold would not be significant.
 - Highway Capacity and Safety – the Applicant confirmed that the Proposed Development's impact on highway capacity and safety had been reviewed. The assessments, based on peak traffic flows, found that there would be no significant effect on highway operations or safety. Measures like car sharing and managing deliveries through a scheduling system were also highlighted.
 - Kent Street – the Applicant confirmed that due to its use as a construction access route, significant effects related to pedestrian safety and traffic were anticipated on Kent Street during peak construction activities. However, these impacts were expected to be short-term lasting around two weeks; and
 - Holding Areas and Access Points – the Applicant explained that the Oakendene substation and compound would be accessed directly from major roads, making additional HGV holding areas unnecessary and safe access points were being designed according to national standards.
- 3.15.56. Though requested by the ExA at ISH1 [REP-033], no Traffic Management Plan for Kent Street was provided by the Applicant at Deadline 2 [EV3-020 Action 15]. In noting that its submission had been deferred by the Applicant to Deadline 3, the ExA stressed in its WQ [PD-009, TA 1.4], that it should be based on actual traffic count surveys, not estimated data and that all other documents using estimated figures for this road should be updated and submitted into the Examination at the same Deadline.
- 3.15.57. The Traffic Management Plan subsequently submitted at Deadline 3 as Appendix D of the OCTMP [REP3-029] was based on the following principles:
- To facilitate access along Kent Street by construction traffic up to four passing places would be installed to provide adequate highway width for two-way traffic.
 - HGV entry would be controlled via the Oakendene temporary construction compound at access A-62.
 - HGV and LGV exit would be coordinated to ensure that they do not occur at the same time as HGVs entering Kent Street.
 - HGV entry and exit would be controlled by banksman along Kent Street, up to and including accesses A-61 and A-64.
 - General traffic would also be controlled by banksman whilst HGVs are entering or exiting access A61 or A-64.

- A temporary speed limit reduction from the current national speed limit to 40mph along the A272, between east of Cowfold to Bolney, approximately 4km.

3.15.58. The ExA explored these proposals in detail at ISH2 [REP4-072]. The questions asked included:

- If any assessment had been made of whether the structure of the carriageway can withstand the over 2000 HGV movements proposed in such a relatively short time?
- Whether any strengthening of the carriageway was proposed in advance of construction activities?
- What contingencies would be in place in event of the carriageway failing during construction of the Proposed Development?
- What remedial works to the carriageway were proposed at the end of construction activities and how long these would take and how would they be managed?
- What form of construction was proposed for the four crossing places?
- How would these be removed, and the lane returned to its former nature and character at the end of construction?
- How would communication be maintained between the holding area for HGVs at the Oakendene West compound and banksmen in Kent Street in order to co-ordinate traffic movements?
- How would the Applicant stop vehicles heading north on Kent Street to allow the free passage of an HGV south to A61 or A64 or north to the A272?
- What would happen if vehicles including non-construction related LGVs and HGVs enter Kent Street after an HGV had started its journey from the Oakendene West Compound to site?
- Where would HGVs be turned around and held pending their exit from site and whether there is space within the Order limits to accommodate this?
- How would the safe passage of pedestrians, cyclists and equestrians be maintained along Kent Street?
- Whether any assessment had been made of the impact on the traffic flows on the A272 and safety of the use of three construction accesses in such close proximity to each other?
- What impact the proposal would have on maintaining safe unfettered access to Oakendene Industrial Estate which would share an access with the Oakendene West Compound?
- What progress had been made on the design of the access to the substation site, A-63, with West Sussex CC?
- What account had been taken of the planting and trees that would need to be removed for the widening of the western kerb line of Kent Street and at accesses A-64 and A-61 in the ES?
- Whether an assessment that weighed the potential impact of using access A-63 to access sections of the cable route currently proposed to be accessed from A-64 and A-61 against the proposed Traffic Management Strategy for Kent Street?

3.15.59. Because the Applicant was unable to provide detailed answers to all the questions at ISH2 [REP4-072], the ExA requested that it provide the following at Deadline 4 [EV5-020 Actions 38 to 42 and 44 to 48]:

- Clarification on whether the proposed widening of the western kerb line of Kent Street at its junction with the A272 and 4 passing places are on highways land or private land and within the Order limits;

- A proposed contingency plan for the repair of the carriageway of Kent Street during construction activities in the case of a carriageway failure;
- Confirmation of the construction details of the proposed passing places on Kent Street, whether they would be removed at the end of construction activities and if so, how the lane would be returned to its former nature and character;
- An explanation of how vehicles not related to the Proposed Development turning into Kent Street would be managed in combination with HGVs already dispatched from the Oakendene West Compound to accesses A64 and A61 in the Lane;
- Confirmation of the size of vehicles that could pass each other using the proposed passing places;
- confirmation of how the safe passage of pedestrians, cyclists and horse riders along Kent Street would be managed;
- Confirmation that once hedging and trees have been removed for the widening of Kent Street at its junction with the A272 and construction of the access A63 (the proposed substation site) there would be adequate screening in the short to medium term of the proposed substation;
- A statement comparing the potential impacts of using Kent Street to access A64 and A61 with using haul roads (using temporary bridging where necessary) from access A63 to access the sections of the proposed cable corridor accessed from A64 and A61;
- A note on the impact of the proposed Kent Street traffic management strategy on the overall traffic modelling for the Proposed Development;
- A note on how the proposed works at accesses A64 and A61 would impact the landscape setting; and
- A demonstration using swept path analysis that HGVs would be able to enter and exit accesses A64 and A61 within the proposed Order limits.

3.15.60. In addition, the ExA requested that the Applicant complete and submit a design for access A-63 by Deadline 5 [EV5-020 Action 43].

3.15.61. The response from the Applicant at Deadline 4 [REP4-074] confirmed the following in relation to the issues raised on the Kent Street traffic management strategy at ISH2:

- Passing Places and Road Widening – the proposed works would fall within the boundary of highway land and the draft DCO and thus within the Order limits.
- Traffic Management – to minimise disruption a detailed traffic management plan would be implemented including holding points; banksmen/ traffic controllers and priority rules for managing construction and local traffic. HGVs would be directed into passing bays to avoid conflicts with general traffic.
- Safety of Pedestrians Cyclists and Equestrians – specific measures would be in place to ensure the safety of pedestrians, cyclists and equestrians including informing them of incoming HGVs, holding HGVs until the route is clear and turning off engines, not to avoid frightening horses.
- Highway Condition Surveys and Repairs – highway condition surveys would be carried out before and during construction to ensure that damage caused by construction traffic is repaired in accordance with draft DCO requirements.
- Environmental and Landscape Impact – mitigation measures such as advance planting and temporary screening would be implemented to minimise visual and ecological impacts during and after construction.

3.15.62. With regard to the ExA request for an assessment that weighed the potential impact of using access A-63 (and haul roads) to access sections of the cable route

currently proposed to be accessed from A-64 and A-61 against the proposed Traffic Management Strategy for Kent Street [EV5-020 Action 45], the Applicant ruled this out again (this issue had first been raised by the ExA in ISH1) concluding:

“That the use of haul roads described above would remove the use of Kent Street by construction traffic other than the crossing described. This would be likely to reduce or avoid the significant effect related to traffic and transport on Kent Street. However, the significant constraints to use of A-63 only during construction, and the additional cost makes the use of A-63 a significant risk to delivery of the Proposed Development. This, combined with the reduction in effectiveness of secured ecological and landscape mitigation, weigh heavily against a change to the application proposals in this location”.

3.15.63. The ExA considered that at that stage of the Examination the Applicant had not properly understood the construction traffic implications particularly to Kent Street and there were still many outstanding concerns with respect to the impact of construction traffic on roads in the vicinity of Cowfold including:

- The safe construction of the works being dependent on the detailed development by the Applicant of a complex traffic management strategy involving HGV movements along the A272 and in and out of Oakendene Compound, Oakendene Substation Site and Kent Street and its approval by West Sussex CC as highway authority.
- The use of Kent Street a single-track lane requiring careful detailed planning in order to facilitate the safe movement of private vehicles, pedestrians, cyclists and equestrians in combination with construction traffic.
- The outstanding detailed design and approval by West Sussex CC of the permanent access to Oakendene substation.
- Details of the vegetation loss, retention and replanting at the Oakendene substation site.
- Details of drainage including how it would work with the landscaping.

3.15.64. The ExA formed the initial view that the outstanding traffic matters could be controlled at detailed design stage. However, the ExA was unconvinced with the Applicant’s approach to dealing with traffic concerns, alongside other outstanding issues including design, landscaping and tree management and other issues across a suite of documents and controlled by various Requirements in the draft DCO. This approach would lead to a fragmented and uncoordinated approach to the design of the site and would not assist local authorities and the local community in understanding the details proposed for the site and how they interrelate.

3.15.65. Instead, the ExA considered it considerably more beneficial for all post-consent matters concerning Oakendene to be dealt with as part of a single site-specific plan. This, the ExA considered, could be achieved with a re-draft of Schedule 1, Part 3, Requirement 8 of the draft DCO with its title changed to “*site specific plan for the detailed design approval for the onshore substation at Oakendene*”. The suggested amended wording was as follows:

“8.—(1) Works comprising Work No. 16 together with the associated Work No. 17, Work No. 18 and Work No. 19 (excluding any onshore site preparation works) must not commence until details of— (a) siting and layout; (b) scale and quantum of development and its uses; (c) existing and proposed finished ground levels; (d) landscaping; (e) access; and (f) external appearance, form and materials for any buildings structures and other infrastructure including boundary treatment; (g) a

construction traffic plan illustrating the access and egress points, traffic routing and vision splays; (h) vegetation removal, retention and replanting; and (i) operational and maintenance water usage and site drainage for the onshore substation have been submitted to and approved in writing by the relevant planning authority following consultation with the West Sussex Fire and Rescue Service and Work No. 16 must be carried out in accordance with the approved details”.

3.15.66. The Applicant’s response at Deadline 5 [REP5-121, No. 8], noted the concern of the ExA but explained that in its view, the additional information to be included in the Site Specific Oakendene Plan was already covered by Requirements 12, 13, 15, 17, 24 and 40 of the draft DCO [REP5-005] and consequently the amendment would result in duplication. However, the Applicant did suggest alternative wording for the Requirement.

3.15.67. The ExA noted the Applicant’s response and proposed amendments. However, having reviewed the submissions made at Deadline 5 by IPs, the ExA was still of the view that with the issues still to be resolved in the vicinity of the Oakendene substation site, a comprehensive site-specific plan for Oakendene remained the most appropriate way forward. Such issues included:

- The safety of non-construction traffic, pedestrians, cyclists and equestrians using Kent Street alongside construction traffic.
- The safety of construction accesses off the A272 and Kent Street.
- The restriction of construction traffic from unsuitable routes off the A272.
- The details of vegetation removal, retention and replanting on Kent Street.

3.15.68. In ExA Rule 17 request [PD-017] the ExA reiterated its suggestion for a redrafting of Requirement 8 of the draft DCO, with the following wording:

“Works comprising Work No. 16 and Work No.18 together with the associated parts of Work No 17, access from Kent Street to Work No. 9 and 19 and use of Work No. 10 at Oakendene (excluding any onshore site preparation works) must not commence until - (a) the following details of the substation (Work No. 16): (a) siting and layout; (b) scale and quantum of development and its uses; (c) existing and proposed finished ground levels; (d) landscaping; (e) access (Work No.18); and (f) external appearance, form and materials for any building structures and other infrastructure including boundary treatment; (b) a single comprehensive construction traffic management plan covering: (i) the timing and routing of construction traffic along the A272 and into and out of the Oakendene compound; Substation site and Kent Street; (ii) the safety of construction accesses off the A272 and Kent Street; (iii) the safety of non-construction traffic, pedestrians, cyclists and equestrians using Kent Street; (iv) the restriction of traffic from unsuitable routes off the A272; and (v) measures to minimize the volume of construction traffic passing through the Air Quality Management Area (AQMA) at Cowfold; and (c) details of vegetation removal, retention and replanting within Work Nos. 16 and 18 and along Kent Street at construction accesses A61 and A64, which shall be consistent with the Outline Vegetation Retention and Removal Plan secured under requirement 40 and the Outline Landscape and Ecology Management Plan secured under requirement 12; have been submitted to and approved in writing by the relevant planning authority following consultation with the local highway authority and West Sussex Fire and Rescue Service and Works comprising Works No. 16 and 18 together with the associated parts of Work No 17, access from Kent Street to Works No. 9 and 19 and use of Work No. 10 at Oakendene, must be carried out in accordance with the approved details”.

- 3.15.69. The position at the end of the Examination [REP6-275] on this point, was that the Applicant still considered that amendments to Requirement 8(1) of the draft DCO [REP6-007] were not necessary because of the potential for duplication and concerns that a requirement to secure approval of the detailed design of the substation might hold up progress on the onshore cable route. The Applicant did, however, suggest alternative wording which would mean that a single construction traffic management and access plan is submitted for approval before the first of the works covered by the requirement is commenced, and then for each subsequent part of the works the plan submitted is to take account of the measures previously approved pursuant to the requirement. In this way there would be a plan in place at all times which would take account of all works which are taking place in this locality at the relevant time. This proposed wording is set out in Section 7 of this Recommendation and advanced in the Recommended DCO.
- 3.15.70. IPs, continued to raise the issue of the impact of construction traffic on roads in the vicinity of Cowfold, including the unsuitability of Kent Street as an access route for construction traffic throughout the Examination. However, at each Deadline, the Applicant focussed on responding to only what it considered to be new comments from IPs.
- 3.15.71. The ExA noted at Deadline 3 [REP3-05], Deadline 4 [REP4-070], Deadline 5 [REP5-122] and Deadline 6 [REP6-274] the Applicant responded to the concerns of a number of IPs on other traffic related matters concerning the Cowfold area and Kent Street. The ExA is satisfied that those other matters were adequately responded to and did not need to question those matters further.
- 3.15.72. CvR's Closing Statement at Deadline 6 [REP6-305] provided a final summary of its notable concerns:
- Traffic on the A272 – the A272 is a critical route which is already overcapacity with 18,000 daily users; delays from construction traffic could hinder emergency vehicles and worsen congestion.
 - The Applicant's traffic models underestimate congestion and queuing; and the mitigation proposed, like avoiding peak hours are considered insufficient.
 - Kent Street – is too narrow and unsuitable for heavy construction traffic; proposed modifications, like passing places, are inadequate and dangerous; and previous planning applications had rejected increased traffic on the road due to its width and structural condition.
 - Accidents – the A272 near Oakendene is an accident-prone area, and the Proposed Development could increase collision risks; and a recent head-on collision near the proposed access points underscores the danger.
 - Absence of Holding Bays – no holding bays are planned to manage HGV movements, leading to concerns about queuing and congestion on the A272.
 - Access and Haul Roads – failure to properly address HGV access via Kent Street adds to the safety concerns; and misidentification of Moatfield Lane as a bridleway raises fears of residents being cut off during construction.
 - Air Pollution – increased emissions from queuing traffic on the A272 are considered underestimated, especially in Cowfold, an AQMA.
 - Inadequate Planning – discrepancies in traffic data across different project documents and deadlines suggest incomplete planning; and essential details, such as vehicle types, remains unclear.
- 3.15.73. As a Deadline 6 submission the Applicant was unable to provide a response but had responded to the issues raised by the group and other IPs at previous Deadlines.

3.15.74. In the final SoCG between West Sussex CC, the highway authority for local roads in and around Cowfold, and the Applicant [REP6-255] the following was agreed at the end of the Examination:

- The number of temporary accesses;
- Mitigation in the OCTMP [REP6-255], including the outline traffic management strategy for Kent Street;
- The scope of methodology of traffic assessments; and
- Calculations of construction traffic estimates.

3.15.75. Only agreement with regard to whether sufficient supporting information had been provided for accesses was not reached for the transport topic by the end of the Examination.

The use of Dragon's Lane as an operational access

3.15.76. The Applicant proposes using Dragon's Lane, located south of Cowfold off the A281 as an operational access for the Proposed Development. The proposed access (A-58) is shown on Figure 7.6.4d, Appendix B of the OCTMP [REP6-231]. A number of IPs raised this as an issue in their RRs because the lane is unmade, narrow with residential properties on both sides:

- Susan Janette Ball [RR-373].
- Peter Bailey [RR-298].
- Anna Alexandra Hawkins [RR-023].
- Tim Facer [RR-398].
- Richard Napier Luce [RR-314].
- Meera Smethurst on behalf of Peter Black [RR-299].
- Clare Christian [RR-072].
- Peter Christopher May [RR-300].

3.15.77. The ExA raised this issue in ISH1 [REP1-033, Agenda Item 4(iv)] asking the Applicant to clarify the nature of the work that it would be used for; the type, weight and size of vehicles that would be using it and the frequency of use.

3.15.78. The Applicant confirmed that the access in this location would be for operational purposes only. Paragraphs 23.4.21 and 23.4.22 within Volume 2, Chapter 23: Transport of the ES [REP6-149], describes the expected operational and maintenance phase activities which includes periodic testing of the cable every 2-5 years through attendance by up to three light vehicles such as vans in a day at any one location. Unscheduled maintenance or emergency repair visits for the onshore cable would involve a very small number of vehicles, typically light vans. Infrequently, equipment may be required to be replaced, then the use of an occasional HGV may be required, depending on the nature of the repair however, this would be exceptional. The Applicant also confirmed that it was intended that construction traffic would come up the haul road and that there were no proposals to use Dragon's Lane for a construction access [REP1-033].

3.15.79. The ExA asked the Applicant to consider and report on alternatives to the use of Dragons Lane for exceptional HGV use during the operational phase of the Proposed Development; and provide details on how HGVs would negotiate Dragons Lane in exceptional circumstances during the operational phase of the Proposed Development [EV3-020, Actions 18 and 19] by Deadline 1.

- 3.15.80. The Applicant's response at Deadline 1 [REP1-018], did not propose any alternative routes to the use of Dragon's Lane for HGVs to access the onshore export cable. It stressed that the design, the construction and the commissioning of static infrastructure such as the onshore export cable are undertaken in a way to ensure that no major replacement or repair is necessary over the lifetime of the asset. Consequently, it was therefore not reasonable to assess the need for HGVs to access Dragon's Lane because it is such an unlikely scenario. Further, the Applicant explained, that in the very unlikely event that the operational access proves unsuitable for the type of vehicle required for a repair, further consents and land rights may need to be procured if required for larger vehicle access. The Applicant responded to RRs in a similar vein [REP1-017].
- 3.15.81. In its WQ [PD-009, TA 1.7], the ExA noted the Applicant's response [REP1-018], and asked, for clarity during all phases of the Proposed Development, whether Schedule 7 of the draft DCO [REP2-002] should specify the type of vehicle and in what phase of the Proposed Development it is permitted to use construction, light construction and operational accesses.
- 3.15.82. In its response [REP3-051] the Applicant did not consider it necessary or appropriate to add additional complexity in seeking to define what type of vehicle may use the land rights sought in Schedule 7 to the draft DCO and/or at what phase of construction and/or operation those vehicles may use the access rights sought. The Applicant considered that those matters were more appropriately controlled, in respect of the construction phase, through the OCTMP secured by Requirement 24 of the draft DCO. In relation to the operation and maintenance phase, it reiterated its position set out in [REP1-018] and summarised above.
- 3.15.83. The ExA did not consider the matter warranted further questioning.

Access along King's Lane/ Moatfield Lane during construction

- 3.15.84. King's Lane/ Moatfield Lane is a private road which has a public bridleway and public footpath running over parts of it which provides access off Kent Street to a number of homes and businesses. The proposed route of the onshore export cable would cross the lane in two places in open cut. The maintenance of access to properties during the construction phase of the Proposed Development was an issue raised in RRs by the following IPs:
- Paul Lightburn [RR-293].
 - Toby Chapman [RR-402].
 - Clare Christian [RR-072].
 - Robert Comolli [RR-316].
 - Charlotte Mansell [RR-060].
 - Steve Mansell [RR-365].
- 3.15.85. The ExA raised this issue in ISH1 [REP1-033]. The ExA asked the Applicant how it envisaged the measures listed in the then current OCoCP [PEPD-033], including, advance warning, plating, backfilling outside working hours and localised diversions around the works would work in practice to mitigate the potential impact on residents. The ExA also asked whether the use of HDD had been considered in this location.
- 3.15.86. The Applicant confirmed [REP1-033] that it would seek to minimise impacts while working in this location and would respond to any reasonable request for access but that there would be periods where no access was available. The Applicant

confirmed that this would be planned and that it will give residents three months advance notice. The Applicant noted that it had set up principles to provide a general approach to crossings, but individual crossings would be part of a bespoke solution to be agreed with the contractor with a nominated person for contact. With regard to the use of HDD, the Applicant explained that the impacts of this technique would be greater than open cutting of the road which would only last for a few days at most.

- 3.15.87. In WQ [PD-009, TA 1.5], the ExA again asked the Applicant to demonstrate how the measures set out in OCoCP [PEPD-033] including advance warning, plating, backfilling outside working hours and localised diversions around the works would in practice be deployed to maintain access for residents and businesses of King's Lane/ Moatfield Lane.
- 3.15.88. In its response at Deadline 3 [REP3-051], the Applicant explained that as set out in the Private Means of Access (PMA) principles described in Section 5.7.10 of the OCoCP [PEPD-033], the detailed management of access for individual crossing locations, including potential diversion routes would be developed during detailed design, in collaboration with affected stakeholders. The Applicant would give advance notice (at least three months) to affected stakeholders of the expected crossing works, as soon as these are programmed. Kings/ Moatfield Lane is a narrow single lane road less than six meters wide. The Applicant envisaged that at least a single trench construction can be achieved in a single working day across the road, and that the road could be sufficiently re-instated at the end of the working day to facilitate access outside working hours. Plating over a construction site, such as a cable trench is a commonly applied technique in highway Street Works. There could however be short waiting times for vehicle traffic to allow construction workers to put road plating in place.
- 3.15.89. IPs, in particular Mr Lightburn continued to raise this issue throughout the remainder of the Examination [REP4-120 and REP5-169] considering that the Applicant had not adequately addressed it. The Applicant in focusing on what it considered to be new comments from IPs did not return to the issue in its subsequent comments on IP's submissions.

Sufficiency of justification and supporting information for proposed temporary and permanent access arrangements

- 3.15.90. As evidenced by the final SoCG between the parties [REP6-255], West Sussex CC was in discussion with the Applicant throughout the Examination with regard to the information it required to demonstrate the feasibility, safety and deliverability of the construction and operational accesses required for the Proposed Development.
- 3.15.91. The position at the end of the Examination on this issue was set out in the final SoCG between West Sussex CC and the Applicant [REP6-255] was that while all Stage 1 Road Safety Audits (RSAs) had been submitted and discussed, because the overall RSA process is incomplete, West Sussex CC considers this issue not agreed and outstanding. West Sussex CC did however acknowledge that the OTCMP establishes the principles that would govern temporary access design with there being provisions within Requirement 24 of the draft DCO itself that require details to be submitted to and agreed with West Sussex CC.

Construction accesses A-26 (Michelgrove Lane) and A-28 (Tolmare Farm) in SDNP

- 3.15.92. Michelgrove Lane is a single-track road off the A280 at Long Furlong which the Applicant is proposing is used by construction traffic to access the onshore export cable. In addition, it would itself be crossed by the cable in an open cut trench.
- 3.15.93. A number of IPs, including West Sussex CC raised the unsuitability of this route as a construction access with its few passing places and use by pedestrians, cyclists and equestrians in their RRs.
- 3.15.94. In addition, the SDNPA raised concerns in its RR [RR-358] regarding the impact on the local highway network during construction for both the onshore and offshore aspects of development, and the PRoW Network within the SDNP in general.
- 3.15.95. The ExA raised this issue in ISH1 [REP1-033]. The ExA asked the Applicant to explain how it proposed to safely manage traffic along this route and maintain access to the properties and businesses throughout the proposed works.
- 3.15.96. The Applicant explained that Michelgrove Lane in its current state was not suitable for construction vehicles and so up to eight passing places would be installed to provide adequate highway width for two-way traffic. In respect of trenchless crossings, the Applicant confirmed that this had been considered in the context of construction traffic movements and that the open cutting would be to the east and north of the main access so that access would not be severed for local residents. In response to submissions made by West Sussex CC, the Applicant also confirmed that it was reviewing traffic management options for Michelgrove Lane at the junction with the A280 taking into account traffic survey data, visibility splays and swept path analysis and that once a solution had been identified, it would be submitted to West Sussex CC for approval. In response to submissions made by the SDNPA, the Applicant confirmed that Long Furlong Lane was needed for construction access only and that construction traffic would be shared between accesses A-26 and A-28 to be agreed with the contractor.
- 3.15.97. The ExA asked the Applicant to provide a traffic management strategy for Michelgrove Lane [EV3-020, Action 11] by Deadline 1. In the event, the Applicant responded at Deadline 1 [REP1-018] advising the ExA that discussions were still ongoing with West Sussex CC on a traffic management strategy to achieve safe access at accesses A-26 and A-28 and Michelgrove Lane and that it intended submitting the strategy at Deadline 3 as part of an update to the OCTMP.
- 3.15.98. The ExA asked the Applicant for an update on the strategy in its WQs [PD-009, TA 1.6] and the Applicant confirmed that it had been submitted as part of the update to the OCTMP at Deadline 3 as planned [REP3-051].
- 3.15.99. The Traffic Management Strategy submitted at Deadline 3 as Appendix D of the OCTMP [REP3-029] was based on the following principles:
- Access for all construction traffic from the A280 would be taken solely from A-26 Michelgrove Lane.
 - HGV access would be permitted only as a left-turn from south of the A280 / Michelgrove Lane junction (access A-26). HGVs arriving from the north would therefore be required to travel south to the Clapham Roundabout to complete a U-turn.

- LGV access would be permitted to enter and exit Michelgrove Lane (access A-26) from both directions but would not use Tolmare Farm (access A-28) for entry or exit.
- Exit for HGV construction traffic to the A280 would be taken solely from A-28 Tolmare Farm access. This junction would be controlled by temporary traffic signals to facilitate the safe movement of vehicles out of the junction.
- A temporary 40mph speed limit would be applied on the A280 as a reduction to the existing national speed limit.
- To facilitate access along Michelgrove Lane by construction traffic up to eight passing places would be installed to provide adequate highway width for two-way traffic.

3.15.100. The ExA explored these proposals in detail at ISH2 [REP4-072 Agenda Item 7b]. The questions asked included:

- Why would Tipper HGVs need to exit Michelgrove Lane (A-26) instead of the Tolmare Farm access (A-28) during enabling and reinstatement works?
- Would exit movements need to be supported by a banksman?
- How would the potential conflict between HGVs entering and exiting be the Tolmare Farm access be managed?
- Given the potential problems for HGVs accessing Michelgrove Lane safely would it better just to use the Tolmare Farm access for all HGVs during construction?
- Could the Applicant confirm that the land necessary for the 8 passing places on Michelgrove Lane, is within the Order limits and that no additional land is required?
- How would the safe passage of pedestrians, cyclists and equestrians be maintained along Michelgrove Lane?

3.15.101. The Applicant [REP4-072] explained that:

- The two accesses A-26 and A-28 are located on the A280, approximately 2.5km apart. Each access has constraints related to visibility and width but that a combined strategy was proposed to manage these limitations;
- A temporary 40 mph speed limit would be applied to the A280 in the construction area, down from the national speed limit for safety reasons;
- access A-26 (Michelgrove Lane) would have passing places, allowing two-way construction traffic to use it for HGV entry and LGV exit under traffic light control;
- LGVs would primarily use A-26 (Tolmare Farm) for both entry and exit; and
- pedestrian and equestrian users on PRoW intersecting Michelgrove Lane would have safety measures; including passing places for HGVs and driver education on safely interacting with equestrian traffic.

3.15.102. In response to comments from NH that it wished to be included in the design of traffic lights, the Applicant confirmed that it had included LinSig capacity assessments in the Michelgrove and Tolmare Farm Traffic Management Strategy but that it would forward these on to NH. LinSig is software which allows traffic engineers to model traffic signals and their effect on traffic capacities and queuing. The Applicant's intention is for the signals to be detector based, and so only called when a construction vehicle is waiting to leave.

3.15.103. In response to comments made by the SDNPA in relation to Access A-28 being located adjacent to a scheduled monument at Muntham Park, the Applicant clarified that the route would be passing to the west of scheduled monument, outside of the designated zone, and that this comprised a temporary construction access route.

The Order limits in this location would have a width of approximately 10 meters and so there would be sufficient space to enable passing places to be provided. The Applicant was not excavating down and was also proposing to undertake trial trenching. The Applicant confirmed it would respond to the SDNPA's comments about the effects of vibration on the scheduled monument at Deadline 4 [EV5-020, Action 51]. This matter is addressed in Section 3.15 (Historic Environment) of this Recommendation.

- 3.15.104. In addition, the ExA asked the Applicant to outline the proposed strategy for maintaining the safe passage of pedestrians, cyclists and horse riders along Michelgrove Lane during construction activities at Deadline 4 [EV5-020, Action 50].
- 3.15.105. In its response, the Applicant confirmed that additional information had been provide within Section 8 of the OCTMP [REP3-029] on the general principles to be applied during the construction phase in relation to pedestrians, cyclists and equestrians. In addition, an update had been made to Construction Accesses A-26 (Michelgrove Lane) A-28 (Tolmare Farm), A-61 and A-64 (Kent Street) Traffic Management Strategies included within Appendix D of the OCTMP [REP3-029] to provide specific controls for Michelgrove Lane. These would include:
- Reduction in vehicle speeds to 30mph on the approach to where Public Right of Way (PRoW) 2174, 2263 and 2208 meet Michelgrove Lane.
 - Construction traffic pulling into passing bays and waiting for pedestrians, cyclists or equestrians to pass before continuing along their journey.
 - Where waiting would be required for equestrians, HGV drivers would also be required to turn off their engines until the equestrians are at least 20m away to avoid startling the horse(s).
- 3.15.106. The ExA asked both West Sussex CC and SDNPA to confirm whether they were content with the updated traffic management strategy for accessing construction accesses A26 and A28, contained in Appendix D of the OCTMP [REP4-045] in its FWQs [PD-012, TA 2.2).
- 3.15.107. In its response [REP5-134] West Sussex CC noted that the latest version of the OCTMP [REP4-045] had not addressed previous comments on the traffic management strategy [REP4-086] and that it had provided further comments on the OCTMP which it had shared with the Applicant in advance at Deadline 5.
- 3.15.108. In its response [REP5-143] SDNPA welcomed the latest version of the OCTMP [REP4-045], which had provided clearer principles in respect of potential conflict with PRoW users. However, it maintained that its comments on the previous version of the OCTMP [REP3-030] remained relevant:
- Tracking provided for HGVs at A-26 demonstrated it was not possible to turn left from Michelgrove Lane without occupying the southbound lane. Further consideration should be given to whether additional management controls are required.
 - The cable-drum HGV would not be able to complete a left-turn movement from A-28 raising the question what further works would be required to enable this movement.
 - The proposed construction route to serve much of the construction traffic within the SDNP would comprise a 10km route through what is largely open downland. It was not clear whether the effects of this have been fully assessed in respect of the National Park Purposes and the Special Qualities. As this route is, for

HGV movements, largely a one-way route, this has the potential to have a sustained impact across the construction period.

- Further clarity was required on works required to enable HGVs to negotiate steep gradients on the route.

3.15.109. At the close of the Examination the SoCG between West Sussex CC and the Applicant [REP6-255] confirmed that the latest version of the OCTMP [REP6-231] containing the traffic management strategy for A-26, Michelgrove Lane and A-28 had been agreed subject to West Sussex CC retaining some flexibility regarding traffic management measures, especially for A-28 where temporary traffic signals are indicated to be required for a number of weeks.

3.15.110. In the final SoCG between SDNPA and the Applicant [REP6-254] the final version of the OCTMP [REP6-231] and in particular the Traffic Management Strategy for A-26, Michelgrove Lane and A-28, was not agreed, with SDNPA remaining concerned regarding the impact on the local highway network during construction for both the onshore and offshore aspects of development, and the PRow Network within the National Park. However, apart from a potential link to SD-06, Impact on National Park Special Qualities, traffic and access does not appear in SDNPA's list of outstanding matters within its final PADS [REP6-298].

3.15.111. SDNPA's closing statement [REP6-300] concluded with respect to traffic and transport (including PRowS):

- Whilst of limited or moderate impact, the effects of traffic and transport on the National Park do not conserve or enhance its purposes and the assessment of this impact has not been adequately undertaken by the applicant, there had been a reduction in the number of construction and operational accesses proposed. However, the impact of those remaining is notable, along Long Furlong (A280) and Washington Road (A283).
- Further measures could have been taken to reduce the effects of traffic and transport. However, it was noted that there would be opportunities at the stage-specific level, to address some of these effects. This was made possible through the Requirements in respect of the OCoCP and the inclusion of Requirement 16 in the draft DCO is welcomed.
- There would be a prolonged impact on the PRow network and the South Downs Way National Trail (SDW). However, whilst there was no engagement with the Applicant on the PRow Management Plan during the Examination, the SDNPA acknowledged that Requirement 20 of the Recommended DCO had specific criteria associated with the management of works affecting the SDW and that it would also be consulted in respect of the management of the wider PRow network.
- The agreed Compensation Fund (Requirement 43 of the Recommended DCO) would provide further opportunities to improve accessibility, and users experience within the wider PRow network. This would compensate for the residual effects on the SDW and PRow. SDNPA therefore considered that this topic-specific matter had been resolved.

The impact of construction traffic accessing Washington Compound on the South Downs National Park

3.15.112. In its WR submitted at Deadline 1 [REP1-052] SDNPA was concerned that the construction compound proposed by the Applicant for Washington, whilst outside of the SDNP was likely to have a prolonged impact on residents of Washington Village, which is located within the SDNP. The SDNPA considered that with the

main access to the village located opposite the proposed location to the compound it was likely that noise, vibration and increased traffic were likely to cause harm to the amenity of residents in the village and users of the facilities.

3.15.113. This issue was subject to discussion between the SDNPA and Applicant throughout the Examination. The final position at the end of the Examination set out in the SoCG between the SDNPA and the Applicant [REP6-254] was that the issue had not been agreed.

3.15.114. The Applicant's position in the SoCG [REP6-254] is that a detailed assessment of the construction impacts of the Proposed Development on the local highway network is provided in Volume 2, Chapter 23: Transport of the ES [REP6-149] and Chapter 32: ES Addendum [REP6-169]. The scope and methodology of this assessment was agreed with West Sussex CC and NH during pre-DCO application stakeholder engagement. The assessment concluded that during the construction phase, when taking account of embedded measures such as the OCTMP [REP6-231] and OPRoWMP [REP3-033], the Proposed Development would not result in significant effects to transport receptors within Washington.

The construction, operation or maintenance of sites associated with the Proposed Development adjacent to or in close proximity to the SRN and the implications for the SRN

3.15.115. The construction, operation or maintenance of sites associated with the Proposed Development adjacent to or to or in close proximity to the SRN and the implications for the SRN, was a point of ongoing discussion between NH and the Applicant throughout the Examination.

3.15.116. The final position on this issue, set out at the end of the Examination in the SoCG [AS-051] between NH and the Applicant was that discussions were still ongoing.

3.15.117. NH requires evidence demonstrating that the use/works/any enabling works would not have an unacceptable impact on the safety, reliability and/or operational efficient of the SRN. On 9 July 2024, NH was still waiting for the following information from the Applicant:

- Road Safety Audits.
- Walking Cycling and Horse-Riding Assessment and Review Reports to from part of the guidance for the future of any A27 Hammerpot access implementation and operation.
- A final decision on which access is to be included in the DCO.
- The above to be reflected in Requirements that also include the reinstatement of the verge, footway and pavement at the end of the works period.

3.15.118. The Applicant's position was that it was progressing with the provision of information to NH, and it was confident that designs would be agreed.

3.15.119. At the close of the Examination, the area of disagreement between West Sussex CC and the Applicant [REP6-255] concerned whether there was sufficient justification and supporting information for proposed temporary and permanent access arrangements.

3.15.120. The following matters remained as areas of disagreement between the SDNPA and the Applicant [REP6-254]:

- Local Highway Network Construction impact - the SDNPA had concerns regarding the impact on the local highway network during construction for both the onshore and offshore aspects of development, and the PRow Network within the SDNP.
- Effect of construction traffic on SDNP - construction accesses - the effect of construction traffic on the SDNP had not been appropriately considered and there remained a misunderstanding of SDNPA's remit and interest in this area. The ES failed to recognise the SDLP 2019, or relevant documents such as Roads in the South Downs. The OCTMP was vague and unclear in respect of how movements on key accesses – including those at Long Furlong – would be made and the extent to which additional works would be required to facilitate these (such as additional land for visibility splays or turning).
- Number of accesses, visibility splays and associated works - there are a significant number of construction and operational access within the SDNP, of which many are focussed in a small area between Long Furlong, Washington and the A283. Consideration of the effect this has on the SDNP has not been adequately demonstrated.
- Washington Construction Compound - the construction compound at Washington, whilst outside of the SDNP was likely to have a prolonged impact (including from increased traffic) on residents of Washington Village, which is located within the SDNP.

3.15.121. The construction, operation or maintenance of sites associated with the Proposed Development adjacent to or in close proximity to the SRN and the implications for the SRN remained an area of ongoing discussion between NH and the Applicant [AS-051].

3.15.122. As detailed in their respective SoCGs submitted into the Examination all matters in respect of traffic and access had been agreed between the Applicant and Arun DC [REP5-090], Horsham DC [REP5-091] and Mid Sussex DC [RE5-092].

ExA's Findings

3.15.123. NPS EN-1 2011, recognises that the transport of materials, goods and personnel to and from a development during all project phases can have a variety of impacts on the surrounding transport infrastructure (paragraph 5.13.1). The consideration and mitigation of transport impacts is an essential part of Government's wider policy objectives for sustainable development as set out elsewhere in NPS EN-1 2011 (paragraph 5.13.2).

3.15.124. NPS EN-1 2011, says that, if a project is likely to have significant transport implications, the Applicant's ES should include a Transport Assessment (paragraph 5.13.3) and the Applicant should provide a travel plan and details of proposed measures to improve public transport, walking and cycling to reduce the need for parking associated with the proposal and to mitigate transport impacts (paragraph 5.13.4)

3.15.125. NPS EN-1 2011, goes on to state that the decision-maker should ensure that the applicant has sought to mitigate these impacts, including during the construction phase of the development. Where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, requirements should be considered to mitigate adverse impacts on transport networks arising from the development (paragraph 5.13.6).

- 3.15.126. With regard to mitigation, NPS EN-1 2011 states that water-borne or rail transport is preferred over road transport at all stages of the project (paragraph 5.13.10) and advises that requirements may be attached to a consent where there is likely to be substantial HGV traffic that:
- controls numbers of HGV movements to and from the site in a specified period during its construction, and possibly the routeing of such movements;
 - makes sufficient provision for HGV parking, either on the site or at dedicated facilities elsewhere, to avoid overspill parking on public roads, prolonged queuing on approach roads and uncontrolled on-street HGV parking in normal operating conditions; and
 - ensures satisfactory arrangements for reasonably foreseeable abnormal disruption, in consultation with network providers and the responsible police force (paragraph 5.13.11).
- 3.15.127. NPS EN-3 2011, states that the extent to which generic impacts set out in NPS EN-1 2011 are relevant, may depend on the phase of the Proposed Development being considered. For example, land-based traffic and transport and noise issues may be relevant during the construction and decommissioning periods only, depending on the specific proposals (paragraph 2.6.4).
- 3.15.128. In addition, NPS EN-1 2024 (paragraph 5.4.7) states that the applicant should prepare a travel plan including demand management and monitoring measures to mitigate transport impacts. The applicant should also provide details of proposed measures to improve access by active, public and shared transport to:
- Reduce the need for parking associated with the proposal.
 - Contribute to decarbonisation of the transport network.
 - Improve user travel options by offering genuine modal choice.
- 3.15.129. NPS EN-1 2024 also states:
- The assessment should also consider any possible disruption to services and infrastructure (such as road, rail and airports) (paragraph 5.14.8);
 - Where mitigation is needed, possible demand management measures must be considered (paragraph 5.14.11);
 - If feasible and operationally reasonable, such mitigation should be required, before considering requirements for the provision of new inland transport infrastructure to deal with remaining transport impacts. All stages of the project should support and encourage a modal shift of freight from road to more environmentally sustainable alternatives, such as rail, cargo bike, maritime and inland waterways, as well as making appropriate provision for and infrastructure needed to support the use of alternative fuels including charging for electric vehicles (paragraph 5.14.12);
 - Regard should always be given to the needs of freight at all stages in the construction and operation of the development including the need to provide appropriate facilities for HGV drivers as appropriate (paragraph 5.14.13); and
 - Applicants should consider the DfT policy guidance “Water Preferred Policy Guidelines for the movement of AIL when preparing their application (paragraph 5.14.16).
- 3.15.130. Given the outcome of the comparison of the use of GEART 1993 and EATM 2023 and West Sussex CC’s comments [REP3-073], the ExA is content with the traffic assessment methodology used in Volume 2, Chapter 23: Transport of the ES [REP6-149].

- 3.15.131. Turning to the issue of construction traffic on roads in the vicinity of Cowfold, the ExA is satisfied that it has considered all submissions made by IPs and the response from the Applicant throughout the Examination.
- 3.15.132. The ExA notes the concerns raised by local residents and Cowfold, Bolney and Twineham parish councils with regard to the potential impact of construction traffic in and around Cowfold, including the use of Kent Street as a construction access route. However, this concern is evidently not shared to the same degree by West Sussex CC, the highway authority, because its final SoCG with the Applicant [REP6-255] has agreed that the number of temporary accesses; the latest OCTMP [REP6-231], including the outline traffic management strategy for Kent Street; the scope and methodology of traffic assessments and the calculation of traffic estimates are all adequate.
- 3.15.133. The ExA is therefore content that the Applicant has adequately addressed all the substantive issues raised and the OCTMP [REP6-255] agreed by West Sussex CC would be secured by Requirement 24 of the Recommended DCO.
- 3.15.134. The ExA, nevertheless, remains of the view that an overarching site-specific plan is required because of the complexity of the proposed works and operations in the Cowfold area including:
- The safe construction of the works being dependent on the detailed development by the Applicant of a complex traffic management strategy involving HGV movements along the A272 and in and out of Oakendene Compound, Oakendene Substation Site and Kent Street and its approval by West Sussex CC as highway authority.
 - The use of Kent Street a single-track lane requiring careful detailed planning in order to facilitate the safe movement of private vehicles, pedestrians, cyclists and equestrians in combination with construction traffic.
 - The outstanding detailed design and approval by West Sussex CC of the permanent access to Oakendene substation.
 - Details of the vegetation loss, retention and replanting at the Oakendene substation site.
 - Details of drainage including how it would work with the landscaping.
- 3.15.135. The ExA notes the Applicant's concerns that the wording proposed by the ExA for Requirement 8(1) of the draft DCO in [REP4-004] and [PD-017] to achieve this, would lead to duplication and potentially delay work on the onshore cable route. Having reviewed the alternative wording for this requirement proposed by the Applicant in [REP6-275] the ExA considers that this would achieve the same effect. The ExA has therefore included the Applicant's proposed alternative wording for Requirement 8(1) in its Recommended DCO.
- 3.15.136. With regard to the use of Dragons Lane, the ExA is satisfied that it has considered all submissions made by IPs and the response from the Applicant throughout the Examination.
- 3.15.137. The ExA is content that Dragons Lane is suitable for the routine inspection and maintenance operations proposed by the Applicant requiring only up to 3 light vehicles to use it in a day every 2-5 years. The ExA notes that major repair or replacement of the onshore export cable necessitating the use of HGVs is considered extremely unlikely over its lifetime. It also notes that in such an unlikely event then further consents and land rights may need to be procured to facilitate the

access of HGVs unsuitable for Dragon's Lane. The ExA is therefore content that the Applicant has addressed this issue.

- 3.15.138. In respect to access along King's Lane/ Moatfield Lane, the ExA considers that the Applicant has adequately addressed concerns raised by IPs owing to:
- The short timescale it would take to cross the 6m wide lane in open cut (a single working day).
 - The fact that the lane can be plated during the day (albeit with a slight delay to residents) and reinstated outside working hours to provide full access.
 - The greater potential impacts of HDD compared to open cut of such short duration.
 - The Applicant's commitment to communicating and liaising with residents.
- 3.15.139. On the matter concerning the sufficiency of information for proposed temporary and permanent access arrangements, the ExA considers that given that the provision of information to West Sussex CC is well advanced and the authority acknowledges that the OCTMP, itself secured in the Recommended DCO by Requirement 24 which requires such information to be submitted and agreed by West Sussex CC before works commence, the ExA concludes that the Applicant has adequately addressed concerns on this matter.
- 3.15.140. The impact of vibration from the haul road on the scheduled monument at Muntham Court is addressed in the Historic Environment section of this Recommendation. The effect of the Proposed Development on the special qualities of the SDNP is addressed in Seascape, Landscape and Visual and the SDNP Sections of this Recommendation.
- 3.15.141. The ExA notes that at the end of the Examination the SDNPA had not agreed the final version of the OCTMP [REP6-231] and in particular had outstanding concerns with regard to the traffic management strategy for the haul road running between A-26 and A-28, including Michelgrove Lane [REP6-254]. However, the ExA also notes that in its closing statement [REP6-300] SDNPA acknowledges: the reduction in the number of construction and operational accesses proposed; the opportunities at project stage-specific level to address effects due to the OCoCP secured by Requirement 16 of the draft DCO; specific criteria in Requirement 20 of the draft DCO associated with the management of works affecting the SDW; that it would be consulted in respect of the management of the PRoW network and that a Compensation Fund had been agreed which would provide further opportunities to improve accessibility, and users experience within the wider PRoW network and compensate for the residual effects on the SDW and PRoW.
- 3.15.142. In addition, the ExA notes at the close of the Examination the SoCG between West Sussex CC as the highway authority, and the Applicant [REP6-255] confirmed that the latest version of the OCTMP [REP6-231] containing the traffic management strategy for A-26, Michelgrove Lane and A-28 had been agreed subject to West Sussex CC retaining some flexibility regarding traffic management measures, especially for A-28 where temporary traffic signals are indicated to be required for a number of weeks.
- 3.15.143. Taking all this into account the ExA concludes that with Commitments and/ or measures contained in the latest versions of the OCoCP [REP6-224] and OCTMP [REP6-231] secured in the Recommended DCO by Requirements 22 and 24 respectively and Recommended DCO Requirements 16 (Highway Accesses in the

SDNA) and 20 (PRoW) the Applicant has adequately addressed concerns raised by IPs.

- 3.15.144. In respect to the Washington compound, the ExA concurs with the Applicant's assessment of the potential effects of the Proposed Development on transport receptors within Washington. The ExA therefore concludes that the Applicant has adequately addressed concerns on this issue.
- 3.15.145. In respect to the SRN, the ExA acknowledges that the concerns raised by NH remained unresolved at the close of the Examination. However, the ExA considers that given that the provision of information is well advanced, the OTCMP, itself secured in the Recommended DCO by Requirement 24 requires information to be submitted and agreed before works commence and the Recommended DCO includes PPs with respect to NH, the ExA concludes that there would be no harm to the SRN.
- 3.15.146. The ExA finds that in accordance with NPS EN-1 2011 (paragraphs 15.3.1 to 15.3.6 and 15.3.11):
- The Volume 2, Chapter 23: Transport of the ES [REP6-149], considers all relevant potential transport effects during the construction, operation and maintenance, and decommissioning phases of the Proposed Development;
 - Sections 23.9 to 23.11 of Volume 2, Chapter 23: Transport of the ES [REP6-149] identifies possible transport impacts and environmental measures to mitigate these impacts are embedded into the design.
 - Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the ES [REP6-208] provides a traffic assessment carried out using current transport guidance.
 - The Applicant has prepared travel plans to mitigate transport impacts - Outline Construction Workforce Travel Plan (OCWTP) [REP3-031] and an Outline Operational Travel Plan (OOTP) [APP-227].
 - The Applicant has provided additional transport infrastructure in the form temporary construction accesses and permanent operational accesses along the onshore cable corridor.
 - Proposed HGV routes have been identified and restrictions on HGV timing are proposed to avoid adverse impact on sensitive receptors, particularly schools as set out within the OCTMP [REP6-231].
- 3.15.147. Further, the ExA finds that with reference to NPS EN-1 2024 (paragraphs 15.4.7, 15.4.8, 15.4.11 to 15.4.13 and 15.4.16):
- Movement by sustainable means is encouraged with sustainable links such as bus stops and rail lines are discussed in the OCWTP [REP3-031] and OOTP [APP-227];
 - The traffic assessment has considered possible disruption to services and infrastructure such as road, rail and airports in the OCTMP [REP6-231];
 - Trip consolidation and other demand management measures will be implemented as contained in the OCWTP [REP3-031] and OOTP [APP-227];
 - The needs of freight traffic are considered within the OCoCP [REP6-224]; and
 - The transport of abnormal indivisible loads (AIL) has been subject to assessment within the Appendix 23.1: Abnormal Indivisible Load assessment, Volume 4 of the ES [REP6-206] and is expected to result in minimal disruption.
- 3.15.148. The ExA is satisfied that the Applicant has adequately addressed all other issues related to traffic and access raised at all the Examination deadlines.

Conclusions

- 3.15.149. The ExA concurs with ES Chapter 23 [REP6-149] that the significance of effect from the Proposed Development on traffic and access would be Negligible to Minor Adverse (Not Significant) caused from the construction activities.
- 3.15.150. 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 Requirements 6 (Cable parameters), 8 (Detailed design approval onshore substation), 15 (Highway accesses outside the SDNP), 16 (Highway accesses in the SDNP), 20 (Public rights of way), 22 (CoCP) and 24 (Construction traffic management plan) of the Recommended DCO.
- 3.15.151. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.15.152. The ExA attaches a Little Negative weight to this effect on traffic and access matters in the planning balance.
- 3.15.153. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to traffic and access and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.16. AIR QUALITY

The Applicant's Case

- 3.16.1. ES Chapter 19 [REP6-139] provides an assessment of the Proposed Development's effects on air quality from construction, operation (including maintenance) and decommissioning. The assessment should be read in conjunction with:
- Volume 2, Chapter 4: The Proposed Development [REP6-171]
- Parts of the following chapters are also relevant:
- Volume 2, Chapter 22: Terrestrial ecology and nature conservation, of the ES [REP6-147].
 - Volume 2, Chapter 23: Transport, of the ES [REP6-149].
 - Volume 2, Chapter 32: ES Addendum [REP6-169].
 - Outline Construction Traffic Management Plan [REP6-231].
 - Air Quality Mitigation Strategy [REP6-256].
 - Outline Air Quality Management Plan (OAQMP) [REP6-258].
- 3.16.2. The ES [REP6-139] modelled and assessed air quality impacts from:
- Construction road traffic.
 - Construction plant and equipment on site.
 - Dust impacts from temporary construction activities.
 - Odour impacts from construction.

- 3.16.3. The following activities or impacts were scoped out of the assessment:
- Emissions of air pollutants from operational traffic (traffic flows are expected to be well below the Institute of Air Quality Management (IAQM) and Environmental Protection UK, Land-use Planning and Development Control: Planning for Air Quality criteria (2017) at which a detailed assessment should be considered).
 - Emissions of air pollutants from plant and equipment during operation and maintenance (the amount of such plant or equipment associated with the operation of the Proposed Development is extremely small and there would be no significant emissions).
 - Emissions of dust during operation and maintenance (there are no dust sources associated with the operation of the Proposed Development).
 - Emissions of odour during operation and maintenance (there are no odour sources associated with the operation of Proposed Development).
 - Emissions of odour during decommissioning (there are no odour sources identified apart from the historical landfill. As the decommissioning strategy is to leave the cables in situ, there will be no additional disturbance to the historical landfill and therefore no odour source).
- 3.16.4. For emissions of air pollutants from construction traffic and construction equipment on site the assessment considered ecological receptors, residential properties and other locations where people may be exposed within 200m of affected roads and temporary construction sites.
- 3.16.5. The modelling and assessment of air quality impacts from construction traffic was based on baseline and predicted construction traffic flows and vehicle types in ES Chapter 23 [REP6-149] with the exceedance of IAQM (2017) criteria indicating the need for detailed air quality assessment on the following road links near either the Worthing or Cowfold AQMAs:
- A27 High Salvington.
 - A24 Offington.
 - A24 Findon.
 - A280 Long Furlong.
 - A283.
 - A281.
 - Cowfold Centre.
 - A272 Station Road.
- 3.16.6. Figure 19.2a and 19.2b, Volume 3 of the ES [REP6-139] shows the modelled road links, the modelled receptors and the monitoring sites used to inform the road traffic modelling. Within the Worthing AQMA, concentrations were modelled at 14 Worthing Borough Council (Worthing BC) monitors, and 193 receptors representing the façades of each property closest to the road sources. Within the Cowfold AQMA, concentrations were modelled at three monitors, and 50 receptors representing the façades of each property closest to the road sources.
- 3.16.7. The latest version of the Atmospheric Dispersion Modelling System (ADMS) Roads 5.0 atmospheric dispersion model developed and validated by Cambridge Environmental Research Consultants was used to model the dispersion of the emissions and calculate the resulting concentrations at the specified receptors for three traffic flow scenarios: 2019 baseline; 2026 without the Proposed Development and 2026 with the Proposed Development.

- 3.16.8. Concentrations from the road sources, as output from ADMS Roads, were then added to background concentrations from the Defra background maps to obtain total concentrations of NO_x, PM₁₀ and PM_{2.5}. Concentrations of NO₂ were determined using Defra's NO_x to NO₂ Calculator.
- 3.16.9. IAQM (2017) provides a quantitative method to assign standard descriptors to impacts depending on the magnitude of the change in ground level concentrations and the background concentration, in relation to the relevant AQO. It also provides qualitative guidance on the assessment of significance. Table 19-30 [REP6-139] provides impact descriptors for increases in annual mean concentrations which were then classed in EIA terms.
- 3.16.10. The modelling and assessment of air quality impacts from construction plant and equipment on site was based on emission factors for NO_x, PM₁₀ and PM_{2.5} taken from the EU Directive 2004/26/EC which sets regulatory limits for emissions from non-road mobile machinery and a division of works into:
- Trenching.
 - Temporary construction compounds.
 - Landfall and onshore substation work at Oakendene.
 - Existing National Grid Bolney substation extension works.
- 3.16.11. It was assumed, as a highly conservative worst-case, that plant items operate 24 hours a day, seven days a week.
- 3.16.12. The assessment of dust impacts (soiling effects on people and property, human health and ecological) from temporary construction activities was based on IAQM Guidance on the Assessment of Dust from Demolition and Construction (2024), which provides a method to assess the significance of construction effects by considering the annoyance due to dust soiling as well as harm to ecological receptors and the risk of health effects due to any significant increases to PM₁₀ and PM_{2.5}.
- 3.16.13. A detailed assessment is deemed to be required as described in the IAQM (2024) where there is:
- A human receptor located within: 350m from the temporary construction site boundary; and/or within 50m of the route(s) used by vehicles on the public highway, up to 500m from the temporary construction site entrance(s).
 - An ecological receptor located within: 200m of the boundary of the temporary construction site; or 200m of the route(s) used by construction vehicles on the public highway, up to 500m from the temporary construction site entrance.
- 3.16.14. In the IAQM (2024) methodology, site activities are divided into four types to reflect their different potential effects: demolition; earthworks; construction and track out.
- 3.16.15. The IAQM (2024) methodology for determining the risk of dust impacts was carried out in the following steps:
- The potential dust emission magnitude was determined (classified as large, medium or small).
 - The sensitivity of receptors that may be affected by dust was determined (classified as high, medium or low).
 - The sensitivity of the area was defined (classified as high, medium or low).

- The risk of impacts in the absence of mitigation was (classified as high risk, medium risk, low risk or negligible risk).
- The necessary mitigation to reduce the risk of impacts to a negligible level was determined.

- 3.16.16. There is a risk of temporary odour from the construction phase due to excavation works encroaching on the one area of historical landfill, as shown in Figure 19.3, Volume 3 of the ES [REP6-139]. This is mainly offsite but extends up to the proposed Order limits at a potential access road location, and landfilled waste may extend beneath the proposed Order limit. There is also a historical landfill adjacent to the proposed Order limits. However, this site would not be excavated as part of the Proposed Development and was not consider further in the assessment, as the risk of odour is negligible.
- 3.16.17. A simple risk-based assessment based on IAQM Guidance on the Assessment of Odour for Planning (2018) was therefore carried out using a Source–Pathway–Receptor approach to consider the strength of the odour source, how the odour would be diluted and dispersed in the open air, the resulting concentration of odour at receptors, and the sensitivity of affected receptors.
- 3.16.18. IAQM (2018) offers suggestions for rating the source odour potential, the pathway effectiveness (i.e. how much odour is likely to arrive at the receptors), and the sensitivity of the receptors.
- 3.16.19. The sensitivity of the receptors was then considered and the tables in IAQM (2018) were used to combine the likely odour effect with the sensitivity of the receptors to determine the final odour effect at the receptors.
- 3.16.20. Finally, professional judgement was then applied to conclude the significance of the odour effect from the development, considering the potential different magnitude of effects that occur at different receptors.
- 3.16.21. No significant cumulative effects were identified in relation to the Proposed Development on air quality from construction, operation and maintenance, and decommissioning activities.
- 3.16.22. Transboundary effects arise when impacts from a development within one EEA state affects the environment of another EEA state(s). No transboundary effects relating to air quality were identified as part of the screening exercise.
- 3.16.23. An inter-related effects assessment considered LSE from multiple impacts and activities from the construction, operation and maintenance and decommissioning phases of the Proposed Development on the same receptor, or group of receptors Chapter 30: Inter-related effects, Volume 2 of the ES [REP6-165]. The assessment concluded that following the implementation of the embedded environmental measures, there are no significant inter-related effects on receptors considered in the ES. It is not anticipated that any further receptor-led inter-related effects would occur that are of any greater significance compared to the impacts considered already within the ES chapters, and it is not anticipated that project-lifetime inter-related effects of greater significance than those considered in isolation for each individual phase.
- 3.16.24. Table 19-43 of Volume 2, Chapter 19: Air Quality, of the ES [REP6-139] provides a summary of the assessment of significant effects, any relevant embedded

environmental measures and the residual effects on air quality. Table 19-29 of the same document provides a description of the embedded environmental measures and sets out how they would be secured.

- 3.16.25. Section 4.7 of the Planning Statement [REP6-113] provides a summary of the national policy of relevance to the Proposed Development in respect of air quality and emissions and the ES assessment. Considering embedded environmental measures incorporated into the design of the Proposed Development to minimise air quality impacts and further environmental measures in the OAQMP [REP6-258], in particular:
- The use of best practice measures as described in IAQM (2024).
 - Where practical sensitive sites would be avoided by temporary and permanent onshore project footprint.
 - Sullington Hill LWS would be crossed using a trenchless method such as HDD.
 - The onshore cable would be constructed in discrete sections within as short a construction timeframe as possible.
 - The typical construction working area would be 40m along the onshore cable route to minimise construction footprint.
 - The use of core construction hours for onshore elements.
 - The proposed HGV routeing during the construction period to individual accesses would avoid the Cowfold AQMA where possible in line with the OCTMP [REP6- 231], (a review of construction traffic flows confirmed that there would be no significant traffic travelling through the Storrington High Street AQMA which was screened out of the assessment. Therefore, potential impacts on this AQMA are negligible. For Worthing AQMA, the impact on all modelled human receptors is classed as Negligible (Not Significant).
- 3.16.26. Impacts from the construction traffic were classified as negligible within the Cowfold and Worthing AQMAs. In view of the small overall impacts, the highly conservative way in which traffic flows on these road links were estimated, and the temporary nature of the construction phase, the residual effect was judged to be temporary and of a Negligible Significance, which is Not Significant in EIA terms.
- 3.16.27. Further, all impacts from the construction plant activity were classified as negligible, except:
- Two receptors where the impact on annual mean NO₂ was classified as moderate adverse due to trenchless crossing works.
 - 13 receptors where the impact on annual mean NO₂ was classified as slight adverse due to trenchless crossing works.
- 3.16.28. The assessment concluded that in view of the small overall impacts, the highly conservative way in which plant emissions and concentrations from these sources were estimated, and the temporary nature of the construction phase, the residual effect was judged to be of Minor Adverse direct temporary significance, which is Not Significant.
- 3.16.29. With regard to the operational phase of the Proposed Development no further assessment was necessary given the need for only limited occasional site visits and concluded that the residual effect was of Negligible permanent direct significance, which is Not Significant in EIA terms.
- 3.16.30. Overall, based on the above the air quality assessment presented in the ES concluded that the Proposed Development would not lead to air quality breaches

and effects of the Proposed Development on air quality would be Not Significant. It was therefore assessed as being in accordance with NPS EN-1, other national policy and local policy relating to air quality.

Examination Issues

- 3.16.31. The main issue in the Examination was the impact of construction traffic on the Cowfold AQMA.
- 3.16.32. The potential impact of construction traffic on the Cowfold AQMA was identified as an issue within its PADS by Horsham DC at the start of the Examination [AS-010].
- 3.16.33. Horsham DC's LIR [REP1-044] further identified the following issues which it considered required addressing:
- The air quality plan should be in line with Air Quality and Emissions Mitigation Guidance for Sussex (2021);
 - A firmer commitment to HGV routing to avoid Cowfold AQMA;
 - The need for an Air Quality Management Plan (AQMP);
 - Measures to mitigate and/ or compensate for impacts identified by the Applicant; and
 - The control of HGV routing through the Cowfold AQMA.
- 3.16.34. RRs were also received on this issue from the local action group CvR and from residents of the local area including: [RR-334] Ruth Aldred; [RR-313] Richard Morris; [RR-405] Turok Family; [RR-101] S Elsey; [RR-038] Deborah Baxter; [RR-064] Christopher Barnet; [RR-262] Natasha Brabon; [RR-232] Matthew Davies; [RR-297] Penelope Hopkins; [RR-109] Elizabeth Anne Leggett; [RR-152] Ian Redman; [RR-211] Lynne Sorrell; [RR-235] Maurice Huggett; [RR-005] Alan Sutton; [RR-246] Michelle Eve Tucker; [RR-086] David Charles Jenkins; [RR-231] Mary C Woolcock; [RR-090] Deborah Jane Miles; [RR-084] CvR; [RR-236] Meera Smethurst; [RR-113] Emily Mulcare-Ball; [RR-281] Olivia Ball; [RR-067] Christopher Nigel Guy; [RR-098] Donovan Harrison; [RR-376] Susan Turok; [RR-083] Cowfold Parish Council; [RR-107] Eleanor Owens; [RR-144] Henry Smethurst; [RR-394] Theresa Newman; [RR-072] Clare Christian; [RR-240] Michael John Gething; [RR-347] Sharon Awcock; [RR-272] Nicole Edwards; [RR-212] Malcolm Gordon Morley; [RR-036] Barbara Morley; and [RR-096] Diane Playford.
- 3.16.35. The final position at the end of the Examination set out in the SoCG between the Applicant and Horsham DC [REP6-245] was that all PADs had been agreed including:
- Air Quality Mitigation Plan (AQMP) for the construction phase of the development - the overarching Outline Air Quality Mitigation Strategy (OAQMS)[REP6-256] and OAQMP [REP6-258] were acceptable.
 - Air Quality and Emissions Mitigation Guidance for Sussex (2021) - the OAQMS [REP6-256] and OAQMP [REP6-258] both consider Sussex Guidance in assessing and mitigating the emissions associated with the construction phase of the Proposed Development.
 - Health Damage Cost Calculation Methodology – the updated OAQMS submitted at Deadline 6 [REP6-256] contained damage costs in line with previous discussions between the parties and was agreed with Horsham DC prior to submission. With the inclusion of a contingency sum clause, Horsham DC was satisfied with the draft s106 agreement and mitigations proposed in principle

[REP6-236]. The agreement of the former was set out in a joint position statement between HDC and the Applicant at Deadline 6 [REP6-238].

- OCTMP - the OCTMP [REP6-231] was updated to account for emissions of the on-road and off-road construction traffic.
- Construction Traffic Model set up and methodology in regard to air quality modelling – while the Applicant acknowledged that the model was underpredicting, Horsham DC agreed that the outcome of the assessment was valid and there would be no significant impacts from traffic emissions in Cowfold, given the level of traffic expected.

3.16.36. Residents of the Cowfold area and CvR also continued to raise the potential effect of the Proposed Development on Cowfold AQMA throughout the Examination. CvR's final position on the matter set out in its closing statement [REP6-305] was that the impacts on air pollution in the Cowfold AQMA continued to be severely underestimated. This was because in its view, the Applicant had not taken into account:

- The additional impact of 70,000 or more LGVs in causing traffic congestion in the already overloaded village centre;
- The effect vehicles waiting on the road to turn in and out of the various compounds would have as queues rapidly build up behind them (the group had previously submitted evidence from Imperial College which suggested that when a road is at capacity every additional vehicle counts by increasing congestion not just HGVs and percentage increases are no longer sufficient);
- The stop-start behaviour of queuing traffic increasing the pollution beyond that expected from simple traffic counts; and
- The disruption and vehicles required to carry out works to the A272 and Kent Street.

3.16.37. As a final Deadline submission, the Applicant did not have the opportunity to directly respond to CvR's closing statement [REP6-305]. However, it has responded to these issues previously in Appendix A [REP2-030] in response to CvR's WR [REP1-089] in which they were first raised. Section 7 of the response [REP2-030] provided an in-depth technical response to the group's comments on the Cowfold AQMA. In particular, with regard to only assessing the traffic as numbers travelling along the road and the percentage change without considering the effect of turning in or off the road, the Applicant explained that this was incorrect. The air quality model ADMS Roads was configured with specific sections with reduced speeds to represent queues caused by turning movements and traffic lights in Cowfold. Further the Applicant confirmed that it had considered all construction vehicles in its assessment of effects on the Cowfold AQMA in Chapter 19: Air quality, Volume 2 of the ES [APP-060], and in a further sensitivity test in Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006] and these were found to be negligible.

3.16.38. The ExA is satisfied with the responses provided by the Applicant during the Examination on issues raised with respect to the Cowfold AQMA.

3.16.39. At the close of the Examination SoCGs between the Applicant and West Sussex CC [REP6-255]; Arun DC [REP5-090]; Mid Sussex DC [REP5-092] and Horsham DC [REP5-092] identified no outstanding concerns in respect to air quality matters.

ExA's Findings

- 3.16.40. The ExA has considered the effects of the Proposed Development on air quality in the context of the policy framework set by NPS EN-1 2011 and NPS EN-3 2011. The ExA has also given very considerable weight and importance to NPS EN-1 2024 and NPS EN-3 2024 as a relevant consideration.
- 3.16.41. With reference to air quality and dust, paragraphs 5.2.1 and 5.6.1 of NPS EN-1 2011 state that infrastructure development can have adverse effects on air quality in the construction, operation and decommissioning phases. Air emissions include dust, particulates and gases such as sulphur dioxide, carbon monoxide and nitrogen oxide.
- 3.16.42. Where the project is likely to have adverse effects on air quality, the applicant should assess the impacts in the ES (NPS EN-1 2011 paragraphs 5.2.6, 5.6.4). The assessment should include the type, quantity and timing of emissions, effects on premises or locations, and the proposed mitigation (NPS EN-1 2011 paragraphs 5.2.7 and 5.6.5).
- 3.16.43. Paragraph 5.2.11 of NPS EN-1 2011 states that the decision maker should consider whether any additional mitigation measures are needed and whether there is a need for a construction management plan (NPS EN-1 2011 paragraph 5.6.10). Paragraph 5.6.11 of NPS EN-1 2011 gives examples of engineering, layout and administrative mitigation.
- 3.16.44. Paragraph 5.2.10 of NPS EN-1 2011 says that the decision maker must always take account of any statutory air quality limits and refuse consent if a project will lead to non-compliance with a statutory limit.
- 3.16.45. In addition, NPS EN-1 2024 states:
- Paragraph 5.2.1 covers the requirement to consider construction, operation and decommissioning phases as well as outlining the key pollutants of concern (NOx and PM).
 - Paragraphs 5.2.5 and 5.2.6 relate to power plants with combustion sources.
 - Paragraph 5.2.8 states that where a project is likely to have adverse effects on air quality the applicant should undertake an assessment of the impacts of the proposed project as part of the ES.
 - Paragraphs 5.2.9 details the content of an ES regarding air quality, including receptors and future air quality.
 - Paragraph 5.2.11 states that the applicant's assessment should be consistent with national projections of air quality based on estimates of future levels of emissions, traffic, and vehicle fleet.
 - Paragraph 5.2.12 states that where a proposed development is likely to lead to a breach of any relevant statutory air quality limits, objectives or targets, or affect the ability of a non-compliant area to achieve compliance within the timescales set out in the most recent relevant air quality plan/strategy at the time of the decision, the applicant should work with the relevant authorities to secure appropriate mitigation measures to ensure that those statutory limits, objectives or targets are not breached.
 - Paragraph 5.2.13 states that the Secretary of State should consider whether mitigation measures are needed both for operational and construction emissions over and above any which may form part of the project application. A construction management plan may help codify mitigation at this stage. In doing

so the Secretary of State should have regard to the Air Quality Strategy in England, or the Clean Air Plan for Wales in Wales, or any successors to these and should consider relevant advice within Local Air Quality Management guidance and PM2.5 targets guidance.

- 3.16.46. The ExA notes that at the end of the Examination Horsham DC had agreed with the Applicant all matters in relation to the impact of the Proposed Development on the Cowfold AQMA including new Requirement 41 in the now Recommended DCO providing for an air quality mitigation contribution which would be secured by a s106 agreement prior to the commencement of any authorised development onshore [REP6-245 and REP6-238]. The contribution would support measures set out in the agreed Air Quality Mitigation Strategy as updated at Deadline 6 [REP6-256] and/ or described in the West Sussex Transport Plan (2022).
- 3.16.47. Furthermore, the ExA is satisfied with the responses provided by the Applicant during the Examination on issues raised with respect to the Cowfold AQMA. The ExA therefore concludes that the Applicant has addressed this issue.
- 3.16.48. The ExA finds that the Proposed Development is in accordance with NPS EN-1 2011 as:
- The Applicant has assessed the Proposed Development's impact on air quality in Volume 2, Chapter 19: Air Quality of the ES [REP6-139].
 - The assessment [REP6-139] includes the type, quantity and timing of emissions, effects on premises or locations, and the proposed mitigation.
 - The Applicant has considered whether any additional mitigation measures are needed and developed an OCoCP [REP6-224].
 - The assessment [REP6-139] demonstrates that there would be no breach of statutory air quality limits.
- 3.16.49. Further, the ExA finds that with respect to NPS EN-1 2024, the Applicant has demonstrated: that its assessment [REP6-139] considered the impact from construction, operation and decommissioning phases of the Proposed Development on air quality as well as outlining the key pollutants of concern (paragraphs 5.2.1 and 5.2.8); prepared an ES in accordance with paragraphs 5.2.9 and 5.2.11; and that there would be no breach of statutory air quality limits or objectives with mitigation set out in a OCoCP [REP6-224] (paragraphs 5.2.12 and 5.2.13).
- 3.16.50. The ExA is satisfied that the Applicant has adequately addressed all other issues related to air quality raised at all the Examination deadlines.

Conclusions

- 3.16.51. The ExA concurs with ES Chapter 19 [REP6-139] that the significance of effect from the Proposed Development on air quality would be Negligible to Minor Adverse (Not Significant) caused from the construction activities.
- 3.16.52. 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 Requirements 22 (CoCP), 23 (Onshore construction method statement), 24 (Construction traffic management plan) and 25 (Contamination risk) of the Recommended DCO.
- 3.16.53. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and

strategies and all other relevant legislation and there are no other important or relevant considerations.

3.16.54. The ExA attaches a Little Negative weight to this effect on air quality matters in the planning balance.

3.16.55. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to air quality and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.17. SOILS AND AGRICULTURE

The Applicant's Case

3.17.1. The Applicant's assessment of Soils and Agriculture is set out in the ES Volume 2 Chapter 20 Soils and Agriculture [APP-061] updated at Deadline 6 [REP6-143] and the associated figures in ES Volume 3 Chapter 20 Soils and agriculture – Figures [APP-105].

3.17.2. Other relevant application documents include:

- Chapter 22: Terrestrial ecology and nature conservation, Volume 2 [APP-063] updated at Deadline 6 [REP6-147].
- Outline Soils Management Plan [APP-226] updated at Deadline 5 [REP5-066].

3.17.3. ES Chapter 20 [REP6-143] was split into sections broadly in the following areas:

- Scope of the assessment.
- Methodology and baseline data gathering.
- Baseline conditions.
- Basis for the ES assessment including MDSs.
- Embedded environmental measures.
- Methodology for the ES assessment.
- Assessment of effects including cumulative, inter-related effects.
- Summary of residual effects.

3.17.4. ES [REP6-143] confirms that at the scoping stage of the EIA it was agreed that there are unlikely to be any significant effects on soils and agriculture during the operation and maintenance and decommissioning phases so the assessment focuses on the construction phase of the Proposed Development.

3.17.5. Potential effects assessed in the ES [REP6-143] include changes to soil structure, and soil erosion or compaction, in addition to the permanent loss of soils and agricultural land to facilitate the construction of permanent features including the substation at Oakendene, and the existing National Grid Bolney substation extension. At the time of application not all the land had been surveyed, including significant areas of the SDNP due to the risk of UXO with the South Downs Training Area (SDTA) historically used for military training. Parts of this area were deemed to have a higher potential than other areas in the proposed Order limits to be best and most versatile agricultural land (BMVAL). An approximation of the area of land within the Order limits falling into each category of agricultural land was made by supplementing the agricultural land classification (ALC) survey data with provisional ALC classifications.

3.17.6. A range of environmental measures have been committed to in the Commitments Register [REP6-227] which is a certified document in the Recommended DCO relating to soils and agricultural land. These include storage and handling of topsoil and subsoil in accordance with the Defra 2009 Construction Code of Practice for the Sustainable Use of Soils on Construction Sites, protection of land drainage, and other measures defined in the Outline Soils Management Plan (SMP) [APP-226] updated at Deadline 5 [REP5-066], which is based on the site-specific Soil and ALC survey results. Requirement 22(4)(e) of the Recommended DCO would require the Outline SMP [REP5-066] to be developed pre-construction into a final SMP by the appointed construction contractor, based upon an additional (pre-construction) Soil and ALC survey (Commitment C-183). The additional survey would be completed during pre-construction and would cover land not surveyed to date that would be potentially disturbed during the construction phase for the Proposed Development.

3.17.7. Some key embedded environmental mitigation measures relevant to soils and agriculture include those below from the Commitments Register [REP6-227], see Table 20-17 [REP6-143] for the full list of relevant commitments. Many of the Commitments listed below are reflected in the OCoCP secured by Requirement 22(4) of the Recommended DCO:

- C-1 The onshore cable route would be completely buried underground for its entire length.
- C-6 Where practical, sensitive sites would be avoided by the temporary and permanent onshore project footprint including SSSIs, Local Nature Reserves, LWSs, Ancient Woodland, areas of consented development, areas of historic and authorised landfills and other known areas of potential contamination, National Trust Land, Listed Buildings, Scheduled monuments, and mineral resources (including existing mineral sites, minerals sites allocated in development plans and mineral safeguarding areas).
- C-7 Post construction, reinstatement of agricultural land, or other areas of 'soft' land use where the natural soil profile is present, will be to pre-existing conditions and if remaining in agricultural use, to the original ALC grade, except where a permanent at or above ground structure including the transition joint bay, joint bays and the onshore substation and related access, landscape and drainage works are required (including over the onshore cable ducts). This will be completed in accordance with the Materials Management Plan (MMP) (C-69) and Defra 2009 Code of Construction Practice for the Sustainable Use of Soils on Construction Sites PB13298. The stage specific Soil Management Plan(s) (SMP(s)) are to be used in conjunction with the MMP (and Soil Resource Plan – which will be integrated with and may form a subsection of the MMP) to maximise the restoration of excavated soils to their pre-existing condition and location, and if this is not possible, to maximise the reuse of soils within the Proposed Development, minimising soils being relocated outside the Proposed Development or becoming waste.
- C-11 During construction, topsoil and subsoil will be stored within the temporary working corridor of the onshore cable. The topsoil and subsoil will be segregated and stored in line with Defra 2009 Construction Code of Practice for the Sustainable Use of Soils on Construction Sites PB13298, including guidance on utilising separate stockpiles and giving due consideration to adverse weather conditions. Any suspected or confirmed contaminated soils will be separated, contained and tested before removed.
- C-12 During topsoil stripping, machinery with low ground pressure will be used to minimise soil compaction where the soil conditions indicate that compaction is possible. Storage time will be kept to the practicable minimum to prevent the soil

deteriorating in quality. Topsoil stripped from different fields will be stored separately, as will soil from hedgerow banks or woodland strips.

- C-112 No ground-breaking activity or use of wheeled or tracked vehicles will take place within Climping Beach SSSI. Within Littlehampton Golf Course and Atherington Beach LWS vehicular access will be restricted to a low-pressure rig for ground investigation purposes only during the site preparation works. Should remedial action be required in the unlikely event of a drilling fluid breakout access would be taken immediately to ensure drilling fluid can be contained and removed. Reinstatement and compensation measures would then be discussed and agreed with NE. This approach will be detailed in the Pollution Incident Response Plan secured through Requirement 22(4)(j) that will be agreed with the relevant planning authority in consultation with the EA and the SNCB.
- C-114 No ground-breaking activity or use of wheeled or tracked vehicles will take place during the construction phase within Sullington Hill LWS unless remedial action is required. Any predicted activity will be restricted to foot access for the purpose of surveying and monitoring of the progress of the HDD. The existing farm tracks through Sullington Hill LWS may be used by light vehicles (e.g. 4x4, light van) for access purposes during the operation and maintenance phase.
- C-132 Soil stockpiles in the tidal floodplain will have regular gaps to prevent floodplain compartmentalisation. Soil stockpiles would have a maximum bund to gap ratio of 4:1. The worst-case scenario continuous length of embankment would be up to 80m, i.e. with 20m gaps at 80m intervals.
- C-183 An Outline SMP has been developed (included in the OCoCP) to enable construction works to be completed in accordance with the Defra Code of Construction Practice for the Sustainable Use of Soils on Construction Sites 2009 to protect soil resources from damage during the construction phase. Where safety UXO or access constraints have limited the extent of soil and ALC survey to date, survey will be completed at the required density post consent and prior to construction, as part of detailed design. Stage specific SMPs based in the Outline SMP will be produced prior to construction, and once the soil and ALC surveys are complete, to include protective measures for all relevant soil types and agricultural land grades within the working corridor.

3.17.8. In Chapter 20 of the ES [REP6-143] the Applicant stated that there would be potential damage to soil during construction with temporary loss of topsoil and some subsoil from agricultural fields at the landfall, at temporary construction compounds, within the onshore cable corridor, at temporary construction accesses, at the onshore substation site and at the existing National Grid Bolney. This stated that the ALC grades within the Order limits include Grade 2, Subgrade 3a, Subgrade 3b and Grade 4, with Grades 2 and 3a being classed as BMVAL. The Soil and ALC survey completed at the time of submission only covered approximately 40 percent of the land within the Order limits and found mainly Subgrade 3b. The land not surveyed by the Applicant included a significant area of the South Downs due to UXO constraints within the former South Downs SDTA and in other areas due to land access constraints. The Applicant considered the un-surveyed area to be BMVAL for the purposes of assessing the worst-case scenario, as detailed in the baseline section, (paragraphs 20.6.34 to 20.6.38). As a result, the ES stated [REP6-143, Page 5] that of the land within the Order limits:

- 57.8 percent is BMVAL.
- 128.40ha (23 percent) is Grade 2 agricultural land.
- 200.00ha (35 percent) is Subgrade 3a.
- 154.2ha (27 percent) is Subgrade 3b.

- 75.3ha (13 percent) is Grade 4.
- 2.2 percent is either non-agricultural or urban.

- 3.17.9. The ES states [REP6-143] that the design of the Proposed Development has sought to minimise the potential impact to soil resources and agricultural land through consideration of these potential receptors, throughout the design process. It concludes that the Proposed Development would result in a permanent loss of up to 13.04ha of agricultural land where permanent development would take place at the substation locations, all of which is assessed to be BMVAL [paragraph 20.10.6].
- 3.17.10. The ES states [REP6-143] there would be a temporary loss of an additional 190.86ha from the temporary loss of topsoil and some subsoil from agricultural fields will be needed at the landfall, at temporary construction compounds, within the onshore cable corridor, haul roads and temporary construction accesses. The ES states [REP6-143] that in practice due to the phased construction, smaller areas would be exposed at any one time with reinstatement of agricultural land occurring once lengths of cables are installed. When the application of the relevant embedded measures outlined in [Table 20-17 of REP6-143] including C-7, C-11, C-19, C-133 and C-183 are applied, the Applicant considers this to be a low magnitude of change.
- 3.17.11. The ES concludes [REP6-143] this would result in a moderate adverse effect which is potentially significant reflecting the large area of agricultural land where soil disturbance would take place during construction. The Applicant concludes that based on the commitment to implement the final SMP during the construction phase, and the requirement in Commitment (C-7) that land remaining in agricultural use will be restored to its original ALC grade, as defined by the soil resource surveys, the potential for loss of / damage to agricultural land as a result of temporary disturbance during construction will be minimised and the overall effect is likely to be not significant for temporary loss of soil and agricultural land.
- 3.17.12. The ES Chapter 20 [REP6-143] also states there would be a loss of 7.24ha of agricultural land in regard to soil resources and soil functions associated with the permanent development of which all or most soils within the onshore substation landscaping and drainage area (5.8ha) would either stay in situ or be reused within the area in accordance with commitment (C-7) to retain soils within the Order limits.
- 3.17.13. In the ES, the Applicant concluded [REP6-143] there would be a permanent residual effect of moderate adverse significance, which is potentially significant but based on professional judgement and the embedded environmental measures the Applicant concludes this is not significant.
- 3.17.14. The Applicant concluded that no significant cumulative, inter-related or transboundary effects were identified on soil and agricultural land receptors during the construction, operation and maintenance, and decommissioning phases.

Examination Issues

- 3.17.15. The main issues for soils and agriculture in the Examination were:
- Coverage and quality of the ALC surveys and potential effects on BMVAL.
 - Effects on soils from handling, storage and use of machinery.
 - Soil reinstatement to maintain original classification grade.

Coverage and quality of the ALC surveys and potential effects on BMVAL

- 3.17.16. NE raised some general concerns with the quality of the ALC survey in its RR [RR-265] and submitted advice on soils into the Examination at Deadline 4 [REP4-095]. This advised that the final sign off of the SMPs should be based on detailed ALC surveys post consent due to the absence of detailed characterisation surveys for large areas of the site. NE stated that without this data it would advise that the Applicant is currently unable to demonstrate that significant impacts to BMVAL would be avoided, or that the design of potential mitigation would safeguard the soil resources. NE stated it understood that these detailed surveys would be undertaken post consent, and the relevant planning authority would need to ensure that the mitigation measures remain fit for purpose.
- 3.17.17. The SDNPA also acknowledged the missing information on ALC surveys in its WR [REP1-052] stating it would expect this information to be fully provided in due course to allow review prior to any construction work. The SDNPA raised a further concern at Deadline 4 on the Applicant's approach to grade all land not yet surveyed as Grade 3 (BMV) rather than a proportion as Grade 2 (BMV) saying that it downgraded its importance.
- 3.17.18. In response to concerns [REP5-122] the Applicant stated this was addressed through Commitment C-183 [REP6-228] which requires that where constraints have limited the extent of soil and ALC survey to date, a survey will be completed post consent and prior to construction, as part of detailed design. Stage specific SMPs based on the Outline SMP [REP5-066] would be produced prior to construction, and once the soil and ALC surveys are complete, would include protective measures for all relevant soil types and agricultural land grades within the working corridor.
- 3.17.19. In addition, the Applicant confirmed [REP5-122] that the Outline SMP [REP3-027 updated at Deadline 5 REP5-066] confirms that ALC surveys would be completed by suitably qualified and experienced soil scientists or experienced soil specialists prior to the relevant stage construction of the Proposed Development using the same standards as the survey completed to date. The Applicant added that the ALC report(s) for areas within the Order limits where soil disturbance would take place and that have not been surveyed, would be provided to NE and the relevant planning authorities once available. The stage specific SMPs, developed in accordance with the Outline SMP [REP3-027 updated at Deadline 5 REP5-066], would refer to the complete ALC survey data for the relevant stage. The Applicant also referred to commitment C-259 (Commitments Register [REP6-228]) in relation to the micro-siting of joint bays in land of the lowest ALC grade present, if this is possible. The ExA did not consider it necessary to examine the matter further as sufficient information had been provided to make a judgment.

Effects on soils from handling, storage and use of machinery

- 3.17.20. NE raised a number of concerns regarding soil handling, storage and compaction from the use of machinery which were listed in its first Risk and Issues Log at Deadline 1 [REP1-059a]. The SDNPA stated inadequate mitigation and compensation measures were presented in respect of soil management in its LIR [REP1-049] and Arun DC and Horsham DC raised concerns in their respective LIRs [REP1-039] and [REP1-044] including that soil/aggregate stockpiles should be placed as far away as possible from residents and other sensitive receptors and approval should be sought from the District Council regarding their exact position.

- 3.17.21. The Applicant updated paragraph 5.2.7 of the Outline SMP [REP5-066] to reflect that subsoil stockpiles should not be covered with topsoil as the two would mix and be impossible to separate, stating that topsoil and subsoil resources would be stripped separately and stored in separate low bunds, of up to 3m in height for topsoil, and up to 5m in height for subsoil. In addition, the Applicant updated paragraph 7.1.3 of the Outline Soils Management Plan at Deadline 3 [REP5-066] to state that the proposed decompaction strategy for the soil types present would be outlined in the stage specific SMPs.
- 3.17.22. The final version of NE's Risk and Issue Log at Deadline 6 [REP6-296] stated that the majority of issues relating to soils were fully resolved except for two relating to ambiguity surrounding the seasonal timing of soil handing and vegetation removal during winter months.
- 3.17.23. The closing statements and PADS from the SDNPA [REP6-300], Horsham DC [REP6-279] and Arun DC [REP6-276] suggest the issues were resolved by Deadline 6. The ExA did not consider it necessary to question the matter further in the Examination as sufficient information had been provided to make a judgement.

Soil reinstatement to maintain original classification grade

- 3.17.24. NE raised concerns regarding the commitment to reinstate to pre-existing conditions [RR-265] and Arun DC raised similar concerns in its LIR [REP1-039]. As a result the Applicant strengthened Commitment C-7 at Deadline 1 which NE welcomed in its response to ExA question SA 1.2 [REP3-086] advising that the pre-existing conditions should be informed by the baseline ALC grade and the Commitment C-7 should be clearly demonstrated in updated named plans to fully address its concerns.
- 3.17.25. At Deadline 4 [REP4-079] the Applicant stated updated ES chapters and control documents would be submitted at Deadline 6 where required, as per the ISH 2 Action Point 32 [EV5-018]. The Applicant stated that these updates would capture the amendments made throughout the Examination ensuring commitments and securing mechanisms are appropriate for the post-consent phase. At Deadline 6 NE's Risk and Issues Log [REP6-296 point J93] stated that NE welcomes commitments made in the Outline SMP and had no further comments on this issue. The ExA did not question the matter further in the Examination.

ExA's Findings

- 3.17.26. The ExA has considered the effects of the Proposed Development on soils and agriculture in the context of the policy framework set by the Overarching National Policy Statement for Energy (NPS EN-1 2011 and 2024), the National Policy Statement for Renewable Energy Infrastructure (NPS EN-3 2011 and 2024).
- 3.17.27. The assessment for soils and agriculture as set out in NPS EN-1 2011 requires the Applicant to seek to minimise impacts on the BMVAL (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) and preferably use land in areas of poorer quality (grades 3b, 4 and 5) except where this would be inconsistent with other sustainability considerations. Applicants should also identify any effects and seek to minimise impacts on soil quality taking into account any mitigation measures proposed.

- 3.17.28. The wording of NPS EN-1 2024 which is an important and relevant policy, varies slightly to paragraph 5.10.8 above, adding that:
- The Applicant is encouraged to develop and implement a SMP which could help minimise potential land contamination. The sustainable reuse of soils needs to be carefully considered in line with good practice guidance where large quantities of soils are surplus to requirements or are affected by contamination.
 - The Applicant, should contribute to and enhance the natural and local environment by preventing new and existing developments from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.
 - Although in the case of most energy infrastructure there may be little that can be done to mitigate the direct effects of an energy project on the existing use of the proposed site (assuming that some of that use can still be retained post project construction) applicants should nevertheless seek to minimise these effects and the effects on existing or planned uses near the site by the application of good design principles, including the layout of the project and the protection of soils during construction.
- 3.17.29. In reaching a decision NPS EN-1 2011 requires that the Secretary of State should ensure that applicants do not site their scheme on the BMVAL without justification. It should give little weight to the loss of poorer quality agricultural land (in grades 3b, 4 and 5), except in areas (such as uplands) where particular agricultural practices may themselves contribute to the quality and character of the environment or the local economy.
- 3.17.30. The wording of NPS EN-1 2024, varies slightly to NPS EN-1 2011 in that reaching a decision the Secretary of State should take into account of the economic and other benefits of that land. Where development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.
- 3.17.31. Paragraph 174 of the NPPF, among other matters states that: *“Planning policies and decisions should contribute to and enhance the natural and local environment by: a) Protecting and enhancing... valued landscapes, sites of biodiversity... value and soils... (in a manner commensurate with their identified quality in the development plan) b)...recognising the economic and other benefits of the best and most versatile agricultural land. d)...minimising impacts on and providing net gains for biodiversity” e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil... pollution or land instability f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.”*
- 3.17.32. Paragraph 175 of the NPPF states that *“Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.”*
- 3.17.33. Local planning policy relevant to soils and agriculture from the Adopted Arun Local Plan 2011-2031, Mid Sussex District Plan 2014-2031, Draft Horsham District Local Plan 2019-2036 and South Downs Local Plan 2014-2033 are set out in Table 20-2 of the ES Volume 2 Chapter 20 Soils and Agriculture [APP-061 updated at Deadline 6 REP6-143].

- 3.17.34. The ExA notes the constraints on soil surveying due to a significant proportion of land not surveyed by the Applicant within the former SDTA and considers that the method used by the Applicant to estimate the area covered by BMVAL is adequate. The ExA is content that the issue raised by NE and SDNPA concerning the quality of the ALC surveys have been resolved as far as is reasonably practicable given the commitment by the Applicant to undertake detailed surveys post consent and prior to construction and stage specific SMPs based on the Outline SMP [REP5-066] to be produced prior to construction, and once the soil and ALC surveys are complete, and would be provided to the relevant planning authority and NE as per Commitment C-183 [REP6-227].
- 3.17.35. The ExA is content that the Applicant has demonstrated in [REP6-143] that the effects on BMVAL from the construction of the cable route are temporary and adequately mitigated through the embedded measures in the Outline SMP [REP5-066] and strengthened by Commitment C-7 [REP6-227] which requires the reinstatement of agricultural land back to the previous grade and therefore adequately mitigates the potential impact on BMVAL from the construction of the onshore cable.
- 3.17.36. The ExA acknowledges that the Applicant has demonstrated the permanent loss of BMVAL is almost entirely due to the construction of the permanent onshore sub-station infrastructure at Oakendene and has given adequate consideration of alternative sub-station sites and therefore it is the ExA's view that the Applicant has provided sufficient evidence to justify siting the onshore sub-station on BMVAL and therefore the application meets this policy test in NPS EN-1 2011 and 2024.
- 3.17.37. The ExA concludes that the risks to BMVAL and soil safeguarding has been mitigated as far as possible through consideration of alternatives and embedded measures in the Outline SMP secured through the OCoCP secured via Requirement 22 in the draft DCO [REP6-007] and Commitments in the Commitments Register [REP6-227].
- 3.17.38. The ExA is satisfied that the outstanding issues at the end of the Examination detailed in NE's Risk and Issue Log at Deadline 6 [REP6-298] relating to ambiguity surrounding the seasonal timing of soil handing and vegetation removal during winter months can be adequately resolved post consent as NE suggest.
- 3.17.39. The ExA is therefore satisfied that the EN-1 2011 tests have been met in that the Applicant has minimised impacts on the BMVAL and justified the loss that would occur.
- 3.17.40. Paragraph 5.11.34 of NPS EN-1 2024 states that where schemes are to be sited on BMVAL the Secretary of State should take into account the economic and other benefits of that land. The ExA has reported in Section 3 of this Recommendation on the Applicant's consideration of alternative sites for the onshore substation and concluded that the Oakendene site represents the best available site. The ExA advises on that aspect in Section 5 of this Recommendation where the Proposed Development's benefits are weighed against its disbenefits, as part of the tests of s104(7) of the PA2008.
- 3.17.41. The ExA notes the Soils Resource Plan (SRP) would detail the stockpile arrangements. This would be produced in conjunction with the MMP during pre-construction which would be part of the detailed CoCP, secured by Requirement 22 in the Draft DCO [REP6-007]. These are to be developed following granting of

development consent, in consultation with relevant stakeholders. The ExA is content that there is adequate mitigation and control in the Outline SMP [REP5-066] to manage the concern over location of stockpile arrangements at each stage, as raised by Arun DC and Horsham DC in their respective LIRs [REP1-039 and REP1-044].

Conclusions

- 3.17.42. The ExA examined all the Applicant's submitted assessments and considered all the issues raised during the Examination related to soil and agriculture.
- 3.17.43. The ExA concurs with ES Chapter 20 [REP6-143] that the significance of effect from the Proposed Development on soils and agriculture would be Negligible to Minor Adverse, caused by the loss of BMV land at the permanent onshore sub-station.
- 3.17.44. The ExA concludes that the Proposed Development is in accordance with the NPS EN-1, EN-3 and where relevant EN-5 2011 and with all relevant legislation, other national policies and strategies, and with relevant local policies and that adequate mitigation is secured in the Recommended DCO.
- 3.17.45. The ExA considers that it attracts a Little Negative weight in the planning balance due to the loss of BMVAL at the permanent onshore sub-station.
- 3.17.46. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to soils and agriculture and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.18. MINERALS SAFEGUARDING AND GROUND CONDITIONS

The Applicant's Case

- 3.18.1. This Section considers the effects of the Proposed Development on ground conditions. The Applicant's assessment of ground conditions is presented within Chapter 24 of the ES [REP6-151], supplemented by Figures [APP-111] and Appendix 24.1 [APP-198].
- 3.18.2. The Applicant notes that ES Chapter 24 on ground conditions [REP6-151], should be read as part of the wider ES with particular reference to:
 - Chapter 20: Soils and agriculture [REP6-143] for assessment of potentially significant effects with respect to soil resources and soil structure;
 - Chapter 22: Terrestrial ecology and nature conservation [REP6-147] for assessment of impacts on designated sites including those that are dependent on the water environment (but excluding sites designated for their geological importance which are addressed in this Chapter); and
 - Chapter 26: Water environment [REP6-155] for assessment of potentially significant effects with respect to groundwater and surface water levels, flows and interactions including flood risk receptors and effects of construction dewatering.
- 3.18.3. Chapter 24 of the ES on ground conditions [REP6-151], considers the scope and methodology of the ES, before assessing the effects arising from the construction, operation and decommissioning of the Proposed Development.

3.18.4. The receptors identified that may experience LSE for ground conditions are outlined in Table 24-8 [REP6-151] as:

- Human Health
 - construction / operational workers;
 - residential;
 - commercial / industrial;
 - public open space; and
 - land and property (including land used for allotments, agriculture (crops and livestock), existing and future structures, utilities and infrastructure).
- Controlled Waters
 - groundwater in superficial deposits;
 - groundwater in bedrock;
 - surface waters (for example, reservoirs, streams, rivers, lakes and ponds); and
 - groundwater and surface water abstractions.
- Geodiversity
 - geological Sites of Special Scientific Interest (SSSI);
 - Regionally Important Geological Sites (RIGS); and
 - Locally Important Geological Sites (LIGS).
- Mineral Resources
 - mineral sites with valid planning permissions for minerals extraction, and which have not been exhausted by previous extraction;
 - sites designated as preferred areas for mineral extraction in LPA local plans; and
- Mineral Safeguarding Areas (MSAs) and minerals infrastructure consultation areas (MCAs) in LPA local plans.

3.18.5. Potential effects on ground conditions receptors that were scoped in for assessment are summarised in Table 24-9 [REP6-151] as:

Construction

- Construction activities located on, or adjacent to landfills and other potentially contaminated sites such as industrial / waste management facilities and fuel storage / distribution facilities.
- Construction activities located near to sites of geological importance.
- UXO encounter during construction activities.
- Construction vehicle and equipment maintenance and storage of fuels / oils for construction vehicles and equipment.
- Construction activities located within or near to minerals sites, preferred areas or safeguarding areas.

Operation and maintenance

- Presence of significant quantities of artificial ground, disturbed landfill material or excavated and re-used material beneath permanent infrastructure.
- Operational vehicle and equipment maintenance and storage of fuels / oils for operational vehicles and equipment.
- Permanent infrastructure located within or near to minerals sites, preferred areas or safeguarding areas.

Decommissioning

- Decommissioning activities including removal and reinstatement of the onshore substation.
 - Permanent infrastructure located within or near to minerals sites, preferred areas or safeguarding areas.
- 3.18.6. A number of potential effects have been scoped out from further assessment, resulting from a conclusion of no LSE, detailed in Table 24-10 of the ES [REP6-151].
- 3.18.7. The data sources that have been collected and used to inform this ground conditions assessment are summarised in Table 24-11 of the ES [REP6-151].
- 3.18.8. The MDSs are summarised in Table 24-13 of the ES [REP6-151].
- 3.18.9. At least 27 embedded environmental measures for ground conditions are listed in Table 24-14 of the ES [REP6-151] and the Commitments Register [REP6-227]. Some are listed below as:
- C-6 Where practical, sensitive sites will be avoided by the temporary and permanent onshore project footprint.
 - C-17 Trenchless crossing of watercourses will be provided in accordance with Appendix A Crossing schedule of the OCoCP [REP6-224].
 - C-24 Best practice air quality management measures will be applied as described in IAQM (2024).
 - C-31 Any disposal off-site of excavated material will be undertaken in consultation with the landowner/occupier and in accordance with the Waste Management Regulations.
 - C-69 Construction strategies will be implemented that will seek to maximise the reuse of excavated clean materials from the onshore cable construction corridor where practicable and feasible and maximise the reuse of excavated minerals from the onshore cable construction corridor as a resource, where they remain available following reinstatement works and where their use is practicable and feasible. Prior to the stage of construction, a MMP will developed which includes a specific minerals section which outlines how minerals will be identified, extracted, stored and reinstated, and re-used.
 - C-71 Ensure that the land used for the Proposed Development is suitable for the proposed use with respect to the potential for soil and groundwater contamination and, where necessary, risk-based remediation is undertaken in line with the EA's guidance.
 - C-8, C-25, C-72, C-76, C-137, C-142, C-143, C-149, C-150, C-151, C-152, C-153, C-167, C-234, C-240, C-241, C-245 regarding various activities to mitigate the risk of ground contamination.
- 3.18.10. Commitment C-69 is particularly relevant to safeguarding of minerals, secured through the CoCP secured by Requirement 22, which requires that construction strategies would be implemented that would seek to maximise the reuse of excavated clean materials from the onshore cable construction corridor where practicable and feasible and the development of a MMP prior to construction that outlines where excavated non-waste materials would be reused in line with the CL:AIRE (2011) Definition of Waste Code of Practice (DoWCoP). A declaration would be made to CL:AIRE by a Qualified Person that the MMP has been completed in accordance with the DoWCoP and that best practice is being followed.

This commitment would also require the reuse of excavated minerals from the onshore cable construction corridor as a resource, where they remain available following reinstatement works and where their use is practicable and feasible. A MMP would be developed prior to construction which includes a specific minerals section outlining how minerals would be identified, extracted, stored and reinstated, and re-used.

- 3.18.11. Commitments C-247 and C-293 regarding ground investigations at the landfall and Oakendene substation are also relevant.
- 3.18.12. In respect to minerals safeguarding, the ES [REP6-151] explains that for the minerals assessment, the methodology is based on the proximity of the onshore elements of the Proposed Development to identified minerals resources, and the impact that the onshore elements of the Proposed Development would have on the ability to extract economically viable resources. This was determined by considering the sensitivity of the mineral's resources, based on the likelihood of extraction occurring, and the magnitude of change from the level of impact that the onshore elements of the Proposed Development would have. The ES explains that there is no established methodology for assessing the environmental effects of a development on mineral safeguarding and the methodology used in this assessment has, therefore, been developed based on the generic approach guidance detailed in Chapter 5 [REP6-173].
- 3.18.13. The minerals safeguarding assessment uses a ZOI 250m from the edge of the onshore part of the proposed Order limits and provides a rationale for this distance. Based on the review of minerals planning information a number of potential minerals resources were identified within the study area [REP6-151]:
- Planning application and minerals infrastructure consultation area associated with Rock Common Sand Quarry.
 - planning application at Washington Sand Pit; MSA for soft sand (including potential silica sand).
 - MSA for brick clay.
 - MSA for building stone.
 - MSA for chalk.
 - minerals infrastructure consultation areas at Storrington and associated with Washington Chalk Quarry.
 - proposed strategic mineral site allocations at Ham Farm, Steyning and Chantry Lane Extension, Storrington.
- 3.18.14. The ES [REP6-151] summarises the assessment of residual effects for ground conditions in Table 24-23, for construction, operation and decommissioning, indicating that the assessment of effects is Negligible with a range of very low to moderate risk identified, concluding No Significant adverse effects on land contamination and ground conditions.
- 3.18.15. Table 24-24 [REP6-151] summarises effects of the minerals safeguarding assessment for construction, operation and decommissioning. There are a range of sensitivities, magnitude and level of effect for the mineral receptors including building stone, brick clay, soft sand, Chalk, MCAs and allocated mineral sites. The ES concludes No Significant effect for all with the exception of soft sand during the construction phase, which would continue through the operation and maintenance phase due to the presence of the onshore cable restricting minerals extraction in the vicinity. The ES [REP6-151] concludes that the Proposed Development would

therefore lead to a Major Negative effect on the soft sand resource, which would be temporary for the 30-year operation and maintenance phase which would be Significant.

3.18.16. The ES [REP6-151] goes on to explain that the significant negative effects identified in regards to the soft sand MSA during the construction and operation and maintenance phases would be reversed on the decommissioning of the onshore cable. Whilst the onshore cable would be left in situ as part of the decommissioning works, the Applicant explains there would be no barrier to a minerals developer removing the onshore cable in this area to access the sand resource. The Applicant stated [REP6-151], a worst-case scenario would see some sand lost during the onshore cable removal works, resulting in a permanent minor negative effect which is not significant.

3.18.17. The Applicant concludes that no cumulative effects, or transboundary effects compared to the impacts considered alone were identified for mineral safeguarding from the construction, operation and maintenance and decommissioning of the Proposed Development and that any receptor related, or project-lifetime inter-related effects would be not significant for minerals.

Examination Issues

3.18.18. The main issues in the Examination were:

- The effect of the Proposed Development on the sterilisation of minerals in the MSA and the consideration of alternative cable routes presented by the Wiston Estate.
- HDD feasibility where ground investigations had not been undertaken in advance.

3.18.19. Issues relating to surface water or groundwater contamination are reported on within the water environment section of this Recommendation.

Minerals safeguarding

3.18.20. West Sussex CC raised a concern in its LIR [REP1-054] that although it had requested through its S42 consultation response and at Expert Topic Working Group meetings that a Minerals Resource Assessment (MRA) should be produced that assesses the impact on safeguarded minerals or addresses the issue of severance of resources, one still had not been provided by the Applicant at the start of the Examination and the OCoCP was severely lacking in this area. It stated the Applicant should provide sufficient detail within the OCoCP on safeguarding minerals, the outcomes of a MRA and the requirements of the MMP. The latter should consider mineral safeguarding beyond current demand levels, volumes and types of minerals, mechanisms to avoid needless sterilisation of minerals, including prior extraction and avoiding severance and evidence of discussion with local operators, who could process and manage any minerals.

3.18.21. West Sussex CC asserted in its LIR [REP1-054] that the assessment in the ES on brick clay had been determined in the absence of a MRA, focussing on current demand and needs and not safeguarding of minerals for the future generations. West Sussex CC stated that no quantitative assessment had been provided of how much clay might be sterilised and that without these assessments, it was difficult to assess the significance of the impact for clay, and whether it has been underplayed.

- 3.18.22. Regarding the soft sand resource, West Sussex CC stated in its LIR [REP1-054] that no MRA for safeguarded soft sand had been undertaken, with the ES only providing a high-level assessment of the resource, with no detailed quantitative assessment provided and no assessment of the economic viability of the resource. West Sussex CC stated that it had previously requested that the Applicant considers the issue of severance, particularly for soft sand, at the meeting of 16 June 2023, but that no such assessment or consideration has been given. West Sussex CC warned that if the cable route results in severance of parcels of land underlain by the safeguarded resource, this could effectively sterilise the economic viability that would enable extraction. West Sussex CC continued to say that without a robust MRA, the Secretary of State, as the decision maker, would not be able to consider whether there is an overriding need for the Proposed Development that outweighs the need for safeguarding.
- 3.18.23. Areas of concern from West Sussex CC regarding mineral safeguarding were presented in section 14 of its LIR at Deadline 1 [REP1-054] and in its PADS [AS-008]. A principal concern was that parts of the proposed cable route are underlain by minerals including building stone, brickmaking clay and soft sand that are safeguarded by the West Sussex Joint Minerals Local Plan. In particular, West Sussex CC stated:
- The assessment of brick clay and soft sand in the ES required improvement.
 - No MRA had been produced by the Applicant and that a MRA should be undertaken to address the issue of severance of resources to avoid needless sterilisation of minerals including building stone, brick clay and soft sand.
 - Improvement was needed to the OCoCP regarding safeguarding minerals.
 - The need for a commitment for a MMP to be prepared prior to construction which seeks to maximise reuse of excavated materials.
- 3.18.24. The SDNPA supported West Sussex CC concerns in its LIR [REP1-049] that the Applicant had not yet provided a MRA.
- 3.18.25. The Applicant responded in [REP2-020] to state that it was not possible for the minerals assessment provided in the ES [APP-065] to provide a detailed MRA that fully adheres to the West Sussex Minerals and Waste Safeguarding Guidance, as ground investigations to determine the precise amounts of mineral had not been undertaken at this stage, and this information would not become available until the construction phase. The Applicant stated that it was therefore not possible to identify the potential volumes of materials that could be recovered or to identify the quality of material and its possible end-uses, so it is not possible to identify whether prior extraction could be utilised, and if so, how this would take place. The Applicant stated [REP2-020], that it believed the information provided was proportionate, with proper consideration based on the information available and, where appropriate, considered the worst-case scenarios and therefore adheres to the West Sussex Minerals and Waste Safeguarding Guidance.
- 3.18.26. Questions were raised regarding mineral sterilisation in WQs [PD-009], to which West Sussex CC responded at Deadline 3 [REP3-073] stating that the Applicant had provided little information to demonstrate whether prior extraction of minerals would be practicable/feasible along the cable route. West Sussex CC stated that it recognised the narrow corridor over which the Proposed Development cable installation would take place, and limited extent of any deeper excavations and as such that substantial prior extraction of minerals was unlikely to be feasible. West

Sussex CC also recognised that upon decommissioning, underlying minerals would be again available and thus permanent sterilisation avoided.

- 3.18.27. However, West Sussex CC stated [REP3-073] that the level of detail within the OCoCP was still lacking. This concern was supported by the SDNPA [REP3-071] that further detail should be provided within the OCoCP in respect of mineral safeguarding at the construction stage.
- 3.18.28. At Deadline 4, the Applicant submitted further information [REP4-070, sections 2.1.74-2.1.80] on why prior extraction would not be viable when based around the thin, linear nature of the cable corridor which would provide a limited size for the working area available and for the accommodation of appropriate slope angles on the extraction faces. The Applicant stated that if prior extraction was viable, the resulting open pit would either need re-filling with imported material or would remain as an open void in the landscape creating visual impact issues in the SDNP. [REP4-070] sections 2.1.74- 2.1.80 also contain fuller information from the Applicant on the how the MMP, to form part of the CoCP, would recognise and manage minerals safeguarding through the mitigation measures used in the handling of minerals materials encountered. The Applicant updated the OCoCP at Deadline 4 [REP4-043] to include additional detail on the management of excavated minerals.
- 3.18.29. At Deadline 5 [REP5-134] West Sussex CC stated that it was now satisfied that the Applicant had provided sufficient response on why it is not practical or environmentally feasible to deliver full scale prior extraction and that consideration had been given to other minerals within the assessment, given the constraints on data and information available. However, West Sussex CC also stated [REP5-134] that whilst the update to the OCoCP, a new section 4.13 covering minerals, went some way to addressing how safeguarded minerals would be dealt with, concerns remained on the approach to managing any encountered resources and the adequacy of the information provided in the OCoCP to secure proper consideration via the future MMPs that the CoCP requires via Commitment C-69. West Sussex CC listed a number of inadequacies with this updated section of the OCoCP which included failures to:
- Adequately set out why minerals are safeguarded with no policy links to the West Sussex Joint Minerals Local Plan (JMLP).
 - Reference the relevant plans and key local policies for completeness, which would also provide clarity on policies of relevance to the discharging authorities. West Sussex CC note that the applicant does make reference within [REP4-079], to the JMLP policies of relevance (page 29).
 - Reference to, or include a table of relevant commitments, (C-69).
 - Reference “resource” or “safeguarding” is made in Paragraph 4.13.2 of the OCoCP.
 - Properly consider use of any safeguarded minerals that are directly encountered.
 - Consider the extent to which incidental extraction/reuse of minerals may be possible.
- 3.18.30. West Sussex CC [REP5-134] also stated that:
- The consideration of use of all excavated mineral resources should take place before any re-instatement.
 - The MMP should provide for the identification of any encountered material, where practicable and environmentally feasible and consider it as a resource in

the first instance, making plans for its use, rather than backfilling and only considering any leftover material for proper re-use.

- The OCoCP and associated future MMPs, should be much more specific about how encountered safeguarded minerals would be used as a mineral resource and to provide possible examples (e.g. as part of cable bedding material/as a building material), and thus reducing the need to import materials for construction from elsewhere.

- 3.18.31. The Applicant provided a response to these concerns at Deadline 6 [REP6-274] section 2.5.32 to 2.5.36 adding that the proposed process would maintain the availability of the mineral resource in the long term as it would be available again for extraction following the end of the operational period of the Proposed Development. The Applicant maintains the position this approach safeguards the mineral for future use.
- 3.18.32. At Deadline 6, West Sussex CC stated in its signed SoCG with the Applicant [REP6-225] that the Applicant and West Sussex CC held an expert-to-expert meeting on 19 July 2024 at which an agreement was made as to the amendments required to overcome remaining concerns regarding mineral safeguarding and these would be submitted by the Applicant at Deadline 6.
- 3.18.33. At Deadline 6 the Applicant updated Commitment C-69 in the Commitments Register [REP6-227] secured by the CoCP which is secured by Requirement 22, to strengthen and better align with the strategy for managing safeguarded minerals, stating that construction strategies would be implemented that would seek to maximise the reuse of excavated minerals from the onshore cable construction corridor as a resource, where they remain available following reinstatement works and where their use is practicable and feasible. The Applicant confirmed that prior to the stage of construction, a MMP would be developed which includes a specific minerals section which outlines how minerals will be identified, extracted, stored, reinstated and re-used.
- 3.18.34. West Sussex CC stated in its Closing Position Statement [REP6-280] that this update was welcomed and provided some comfort that minerals resources would be appropriately managed through the forthcoming MMPs, secured via the CoCP and Requirement 22.
- 3.18.35. The SDNPA stated agreement on this issue in its SoCG at Deadline 6 [REP6-254 reference SDNPA51], stating this matter was resolved in respect of the National Park.
- 3.18.36. The Wiston Estate submitted a mineral sterilisation report [REP4-136] at Deadline 4 and as the Mineral Rights Owner for a section of cable, which provided comment on the Applicant's response to ExA WQs regarding minerals. The Wiston Estate suggested ways in which excess sand from bulking once excavated could be dealt with to reduce or avoid waste [REP5-184] raising several remaining concerns including that:
- There was no difference in approach to seek to maximise the reuse of excavated material inside and outside the MSA.
 - There needs to be greater clarity from the Applicant as to whether there is an intention to make use of this mineral in construction or to safeguard the mineral.
- 3.18.37. The Wiston Estate supported the question from the ExA in FWQs [PD-012 MI 2.3] as to whether the Applicant could remove the cable from the MSA post

decommissioning. The Applicant responded [REP5-119] that this was not possible due to the likelihood of further environmental impacts and that the removal of underground infrastructure prior to mineral development was a standard procedure which would be dealt with by a developer if mineral extraction was proposed in the future. This position was supported by West Sussex CC [REP5-134] who stated that leaving the cable in-situ post-decommissioning would be likely to have limited negative impacts on the viability of future extraction and must be balanced with the potential environmental and landscape impacts of cable removal at the decommissioning stage.

- 3.18.38. The Wiston Estate stated throughout the Examination period [REP1-172, REP3-142, REP3-144, REP4-135 and REP4-136] that the Applicant had not had due regard to sterilisation of minerals in the consideration of alternative cable route and in selecting and subsequently promoting the final cable route. The Wiston Estate stated the Proposed Development is therefore not compliant with relevant policy in EN-1 and MP9 of the JLMP.
- 3.18.39. The Wiston Estate submitted a Cable Route Alternatives & Mineral Sterilisation document [REP4-136] which proposed three alternative cable routes, in blue, pink and yellow, which the Wiston Estate stated are technically deliverable and reduce the amount of mineral sterilisation that would be caused by the Proposed Development.
- 3.18.40. The Applicant provided a response [REP5-122 Table 2-30] which stated that responses to the Wiston Estate's proposed alternative routes were provided in the Applicant's Response to RRs [REP1-017] under reference LI89.4, the Applicant's Response to Affected Parties' WRs [REP2-028] under reference 2.28.14 and the Applicant's Comments on Deadline 3 Submissions [REP4-070] under references 2.28.14. In these responses the Applicant stated that it had considered numerous alternatives in the vicinity of the Wiston Estate land, with some route amendments being taken forward. Some of the reasons for not taking forward various alternative route alignments include, concern over the proximity of the authorised landfill at Windmill Quarry which is situated along the northern edge of the A238, technical engineering issues and health and safety concerns associated with existing utilities running through the narrow available area to North of A283, overhead poles and underground water pipes in the area north of the A283, constraint by an adjacent licenced extraction area, avoidance of a Scheduled Monument and avoidance of Ancient Woodland and veteran tree T-932 [APP-194].
- 3.18.41. The SDNPA stated in its response [REP5-143] to the Cable Route Alternatives & Mineral Sterilisation document submitted by the Wiston Estate at Deadline 4 [REP4-136], that the pink and blue alternative routes proposed by Wiston Estate would run through additional areas of Ancient Woodland and in close proximity to LWS, SSSI and a Scheduled Monument.
- 3.18.42. The Applicant responded in further detail on these matters at Deadline 5 in Tables 2-30 and Table 2-31 [REP5-122]. The salient point from the Applicant on this matter is that it is the Applicant's view that ultimately the Proposed Development would not reduce the long-term potential of the land for mineral extraction after any future decommissioning has taken place, stating this is consistent with requirements set out at Paragraph 5.110.9 of NPS EN-1 2011 and re-stated at paragraph 5.11.19 of NPS EN-1 2024.

- 3.18.43. This issue remained unresolved at the close of the Examination with the Wiston Estate stating in its Closing Statement at Deadline 6 [REP6-330] that the Proposed Development fails to comply with key paragraphs of NPS EN-1, the NPPF and local policy due to the long-term sterilisation of minerals and the availability of alternatives which sterilise less mineral. At the close of the Examination, the Wiston Estate continued to assert that the suggested alternatives have been overlooked, and that the Applicant had failed to take proper account of the presence of the minerals within the Wiston Estate's landholding in the option selection process, including those within the MSA.

Feasibility of HDD

- 3.18.44. In their respective RR's/PADS, NE [RR-265 & AS-011], Woodland Trust [RR-393], Forestry Commission [RR-123] and SDNPA [AS-006] raised concern on the feasibility of committing to HDD crossings without ground investigations having been undertaken in advance. Concern was raised particularly regarding the wording of Commitment C-5 and Requirements 6, 22 and 23. This issue was discussed at ISH2 [REP4-072] and examined through WQs [PD-009]. The Applicant confirmed [REP4-072] that submission of a detailed crossing schedule is secured by Requirement 22 and would form part of the stage specific CoCP, provided in Appendix A of the OCoCP [REP6-224]. The Applicant confirmed additional trenchless crossings could be identified during detailed design and included in the stage specific CoCP for that phase. The Applicant confirmed at ISH2 [REP4-072] that it had assessed these crossings and considers them to be viable based on its technical experience and expertise however, in the hypothetical situation that these are not viable, the Applicant confirmed the draft DCO [REP6-007] does not authorise an alternative method and that this would require a variation to the Order on an alternative consent.
- 3.18.45. A further continued concern from NE was reiterated at Deadline 5 [REP5-140] in that as a minimum an HDD risk assessment and feasibility study should be completed and consulted upon with the LPA and relevant IPs prior to commencement of construction and that this should be added as a Requirement secured in the draft DCO. NE stated there remains residual risk that open cut methods could be reconsidered as a DCO variation at a future date. This ongoing concern was highlighted in NE's Risk and Issue Log at Deadline 6 [REP6-296] as outstanding concern. NE stated they recognised there remains a residual risk that open cut methods could be considered as a DCO variation at a future date, should trenchless crossings not be suitable at these ecological sensitive sites. This position was reiterated in NE's Deadline 6 PADS summary statement [REP6-295] and SoCG [REP6-266] as not agreed and having a material impact on the assessment conclusions.
- 3.18.46. This concern also remained as a disagreement with the SDNPA at the close of the Examination [REP6-298]. The SDNPA stated that the Applicant should have undertaken further investigation to ensure a route was achievable prior to determination, although the SDNPA acknowledged that it is the Applicant's risk should trenchless crossing not be possible.

Other matters

- 3.18.47. In relation to other matters, in its RR [RR-085] the Sussex branch of the Council for Protection of Rural England raised concern regarding the deferral of detailed ground

investigations at the onshore substation site at Oakendene and the extension to the existing substation at Bolney until detailed design stage.

- 3.18.48. The Applicant responded to these concerns at Deadline 1 [REP1-017] confirming that the assessment of risks from land contamination has been undertaken in line with the EA's guidance on Land Contamination and Risk Management and that the proposed onshore substation at Oakendene will be subject to further contamination assessment through ground investigation secured through Requirement 25 of the draft DCO [REP6-007].

ExA's Findings

- 3.18.49. In respect specifically to minerals safeguarding, paragraph 5.10.9 of NPS EN-1 2011 and paragraph 5.11.19 of NPS EN-1 2024 states that *"Applicants should safeguard any mineral resources on the proposed site as far as possible, taking into account the long-term potential of the land use after any future decommissioning has taken place."*
- 3.18.50. Paragraph 5.10.22 of NPS EN-1 2011 and paragraph 5.11.28 of NPS EN-1 2024 states that *"Where a proposed development has an impact upon a Mineral Safeguarding Area (MSA), the Secretary of State should ensure that appropriate mitigation measures have been put in place to safeguard mineral resources"*.
- 3.18.51. The NPSs on Energy 2011 do not have a specific subsection on or make specific reference to ground conditions, ground investigation or contamination. Section 5.11 of NPS EN-1 2024 at paragraphs 5.11.15 to 5.11.17 includes policies which seeks to ensure that a site is suitable for its proposed use taking account of ground conditions, risks to land instability and contamination.
- 3.18.52. Policy requirements of the West Sussex Joint MLP (West Sussex CC, 2021). Policy M9 of the MLP states that:
- "(a) Existing minerals extraction sites will be safeguarded against non-mineral development that prejudices their ability to supply minerals in the manner associated with the permitted activities.*
- (b) Soft sand (including potential silica sand), sharp sand and gravel, brick-making clay, building stone resources and chalk reserves are safeguarded against sterilisation. Proposals for non-mineral development within the Minerals Safeguarded Areas (as shown on maps in Appendix E) will not be permitted unless:*
- (i) Mineral sterilisation will not occur; or*
- (ii) it is appropriate and practicable to extract the mineral prior to the development taking place, having regards to the other policies in this Plan; or*
- (iii) the overriding need for the development outweighs the safeguarding of the mineral and it has been demonstrated that prior extraction is not practicable or environmentally feasible."*
- 3.18.53. The ExA agrees with the Applicant [REP6-151] that there would be a significant adverse effect for minerals safeguarding specifically for soft sand during the construction and operational phases of the Proposed Development. However, the ExA is satisfied that the effect would be temporary during the 30-year operational phase, and reversible on the decommissioning of the Proposed Development. The

ExA is also satisfied that leaving any cables in situ post decommissioning would not be a material barrier to mineral extraction.

- 3.18.54. The ExA considers the concerns from West Sussex CC and the SDNPA regarding mineral safeguarding, the reuse of encountered material and the avoidance of unnecessary loss of material to have been resolved through the Applicant's improvements to the OCoCP [REP6-224] and revision to Commitment C-69 to seek to maximise the reuse of excavated minerals from the onshore cable construction corridor as a resource, where they remain available following reinstatement works and where their use is practicable and feasible.
- 3.18.55. West Sussex CC's signed SoCG [REP6-255] and Closing Position Statement [REP6-280] sections 3.45 to 3.48, confirms its concerns were resolved by the close of the Examination. The SDNPA SoCG [REP6-254] also confirms its concerns which were aligned to West Sussex CC concerns, have been resolved.
- 3.18.56. With regard to the alternative cable routes suggested by the Wiston Estate, the ExA is satisfied that the Applicant has presented assessment of a number of alternative routes in an attempt to reduce the volume of mineral that would be sterilised for the duration of the operational life of the project and in each case has presented a reason why each is not technically feasible. The SDNPA indicate they agree with the Applicant that the alternative routes are likely to have greater environmental impact [REP5-143] stating that other alternatives proposed are likely to have other more significant ecological adverse effects on areas such as Ancient Woodland and veteran trees.
- 3.18.57. Given the evidence presented by the Applicant and the responses from West Sussex CC and SDNPA during the Examination, the ExA considers that the Applicant has advanced a strong case that there would be significant technical and feasibility difficulties with a route that avoided the MSA and likely conflict with other environmental policies. The ExA notes that the area of mineral sterilisation is relatively small compared to the size of the MSA and would be temporary for the operational life of the Proposed Development (30 years). These considerations taken together with mitigation for mineral safeguarding discussed in the sections above to seek to maximise the reuse of excavated minerals from the onshore cable construction corridor as a resource, detailed in the MMP which is required through the OCoCP [REP6-224] through Commitment C-69 secured by Requirement 22 in the draft DCO [REP6-007]. The ExA is therefore satisfied that the Proposed Development accords with EN-1 2011 paragraph 5.10.9, in that mineral resources have been safeguarded as far as possible taking into account the long-term potential of the land use after any future decommissioning has taken place and that appropriate mitigation measures have been put in place to safeguard mineral resources and the impact upon the MSA.
- 3.18.58. Regarding the principle of HDD where ground investigations have not been undertaken in advance, the ExA notes NE's and SDNPA's unresolved positions on the feasibility of HDD at the close of the Examination. The ExA considers that the crossing schedule, secured via a new Requirement 46 in the Recommended DCO, commits the Applicant to trenchless crossings at the locations specified 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. On this basis open cut trenching would not be permitted at the locations in the crossing schedule allocated for trenchless crossings within this Recommended DCO. The

risk of feasibility of the trenchless crossings committed to remains with the Applicant and the ExA considers this matter resolved.

- 3.18.59. The ExA is satisfied that Commitments C-247 and C-293 [REP6-227], secured at Requirement 25 of the draft DCO [REP6-007] ensure appropriate mitigation and that adequate ground investigations would be undertaken at the detailed design stage so that the land used for the Proposed Development is suitable for the proposed use in accordance with paragraph 5.11.17 of NPS EN-1 2024.

Conclusions

- 3.18.60. The ExA concurs with ES Chapter 24 [REP6-151] that the significance of effect from the Proposed Development on ground conditions would be Major Adverse (Significant) due the sterilisation of soft sand within a MSA.
- 3.18.61. The ExA is satisfied that the sterilisation would only be short-term and temporary for the life-time of the operation of the Proposed Development and would not in the longer-term restrict or prevent any future extraction of the soft sand. The ExA is also satisfied that the adequate mitigation mitigated is secured by the relevant Requirements in the Recommended DCO.
- 3.18.62. The ExA concludes that the Proposed Development accords with NPS EN-1, EN-3 and where relevant EN-5 2011 and policy M9(b) of the West Sussex Joint MLP to demonstrate that prior extraction is not practicable or environmentally feasible for the remaining volume of mineral. The ExA further considers the Proposed Development accords with other national and local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.18.63. The ExA considers that the Proposed Development attracts a Little Negative weight in the planning balance due to the sterilisation of minerals in the MSA for the duration of the operational life of the Proposed Development.
- 3.18.64. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to minerals safeguarding and ground conditions and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.19. WATER ENVIRONMENT

The Applicant's Case

- 3.19.1. This section looks at the effects of the Proposed Development on the water environment including, water resources, water quality, flood risk, hydrology and hydrogeology.
- 3.19.2. The Applicant's assessment of the Water Environment is set out in the ES Chapter 26 Water Environment [APP-067] updated at Deadline 6 [REP6-155] and the ES Chapter 26 Water Environment – Figures (Part 1 of 2) [APP-117] and the ES Chapter 26 Water Environment – Figures (Part 2 of 2) [APP-118].
- 3.19.3. Other relevant application documents include:

- ES - Appendix 26.1 Detailed water environment baseline information [APP-215].
- ES - Appendix 26.2 Flood Risk Assessment [APP-216] updated at Deadline 4 [REP4-039].
- ES - Appendix 26.3 Water Framework Directive compliance assessment [APP-217].
- ES - Appendix 26.4 Hydrogeological Risk Assessment [APP-218].
- Outline Operational Drainage Plan [APP-223] updated at Deadline 5 [REP5-062].

- 3.19.4. The ES [REP6-155] documents that onshore sections of the Proposed Development cable corridor intersect with parts of the River Arun and upper River Adur and their associated tributaries. A range of receptors were identified including Water Framework Directive (WFD) water bodies, conservation sites, ponds, springs, chalk streams, water resources receptors and flood risk receptors.
- 3.19.5. The Applicant defined the study area for the water environment section of the ES using WFD surface water bodies and groundwater bodies which intersect the Order limits. Given the size of the onshore part of the Proposed Development the area was split into the Southern, Central and North-eastern sections.
- 3.19.6. As the area supports a range of public and private water supply abstractions, a detailed Hydrogeological Risk Assessment was carried out and presented in the Hydrogeological Risk Assessment, Appendix 26.4 of the ES [APP-218]. Section 6 [APP-218] states that the study area is located upon the Chalk of the South Downs, located within areas of known karst. Karst are areas containing significant dissolution features which can act as rapid flow horizons. The Hydrogeological Risk Assessment Appendix 26.4 of the ES [APP-218] identified the hazards of the proposed works that could result in a release of contaminants or dewatering effects to the environment, the consequence of the releases and the likelihood of the event occurring. A number of significant hazard events were identified and for each a set of mitigation measures proposed such that the residual risk is concluded to be low or negligible by the Applicant. The risk assessment determined that no degradation of water supplies is likely to result from the proposed works when specific mitigation is applied.
- 3.19.7. The Flood Risk Assessment (FRA) [APP-216] was updated at Deadline 4 [REP4-039]. This provides an overview of the potential flood risks to and from the onshore elements of the Proposed Development including construction and potential impact elsewhere.
- 3.19.8. The Applicant confirmed that the proposed onshore substation at Oakendene and extension to the existing National Grid Bolney substation are the only aspects of the Proposed Development infrastructure that would be situated permanently above ground and are both situated in Flood Zone 1 [REP4-039]. All permanent infrastructure associated with the landfall and onshore cable would be buried and flood resilient and are therefore anticipated to have a negligible effect on flood risk.
- 3.19.9. Flood risks associated with all sources of flooding were considered in the ES, with fluvial, tidal, surface water, groundwater and artificial sources identified as potentially significant during the construction and periodic operation and maintenance phases of the Proposed Development [REP4-039].
- 3.19.10. The Applicant stated that the landfall and majority of the onshore temporary construction corridor for the underground cable south-west of Crossbush, is situated

within Flood Zone 3 with the onshore cable corridor intersecting with Flood Zone 3 in several locations [REP6-155]. Paragraph 26.6.81 of [APP-067] updated at Deadline 6 [REP6-155] states the majority of surface water flood risk intersecting the Order limits is associated with the fluvial flood extents associated with the Main Rivers and/or crossings of minor watercourses and tributaries of the River Adur and Cowfold Stream. Regions of high surface water flood risk are shown to intersect the onshore substation site, and temporary construction compound locations at Washington and the proposed substation location at Oakendene. This is also highlighted in paragraph 6.4.21 of the FRA [REP4-039].

- 3.19.11. The Applicant confirms [REP6-155] that assessment methodology for the water environment section of the ES is consistent with that provided in the Scoping Report and that the project-wide generic approach to assessment is set out in the Approach to the EIA (REP6-173).
- 3.19.12. Table 26-25, Table 26-26 and Table 26-27 of the ES [REP6-155] summarise the residual effects during the construction of the landfall, cable laydown and construction of the onshore substation in relation to all aspects of the water environment. Table 26-28 and Table 26-29 [REP6-155] summarise the residual effects during the operation and maintenance of the landfall and cable circuits and onshore substation. Table 26-30 and Table 26-31 [REP6-155] summarise the potential residual effects during the decommissioning of the landfall and cable circuits and onshore substation.
- 3.19.13. Potential residual effects of construction of:
- Landfall:
 - Accidental contamination entering watercourses or groundwater.
 - Contaminated runoff entering watercourses and / or intertidal areas.
 - Ground disturbance and mobilisation of sediments / contaminants.
 - Changes to watercourse morphology.
 - Reduction of water availability for existing surface water and groundwater abstractions.
 - Displacement of flood water.
 - Changes in runoff rates and new flow pathways.
 - Increases in flow in watercourses due to dewatering of excavations.
 - Cable laydown:
 - Decline in groundwater levels.
 - Accidental contamination entering groundwater or watercourses, associated with spillage or leakage.
 - Ground disturbance and mobilisation of sediments / contaminants.
 - Silt laden or otherwise contaminated runoff entering watercourses.
 - Changes to watercourse morphology.
 - Reduction of water availability to support existing groundwater or surface water designated or undesignated sites, ecosystems and features.
 - Reduction of water availability to support existing surface water and groundwater abstractions.
 - Physical disruption to existing discharge infrastructure
 - Changes in watercourse conveyance associated with temporary watercourse crossings.
 - Volumetric displacement of flood water.
 - Changes in runoff rates and new flow pathways.

- Increases in flow in watercourses due to dewatering of excavations.
 - Onshore substation:
 - A decline in groundwater levels.
 - Accidental contamination entering groundwater or watercourses.
 - Silt laden or otherwise contaminated runoff entering watercourses.
 - Changes to watercourse morphology.
 - Reduction of water availability to support existing surface water and groundwater abstractions.
 - Physical disruption to existing discharge infrastructure.
 - Volumetric displacement of flood water.
 - Changes in runoff rates and new flow pathways.
 - Increases in flow in watercourses due to dewatering of excavations.
- 3.19.14. For the construction phase, the assessment identified effects ranging from negligible to minor adverse and deemed not significant.
- 3.19.15. Potential residual effects of operation of:
- Landfall and cable circuits:
 - Accidental contamination entering groundwater or watercourses.
 - Changes to watercourse morphology.
 - Reduction of water availability to support existing groundwater or surface water designated or undesignated sites, ecosystems and features.
 - Reduction of water availability to support existing surface water and groundwater abstractions.
 - Volumetric displacement of flood water.
 - Changes in runoff rates and new flow pathways.
 - Onshore substation:
 - Reduction in groundwater levels.
 - Accidental contamination entering groundwater or watercourses.
 - Reduction of water availability to support existing surface water and groundwater abstractions.
 - Changes in runoff rates and new flow pathways.
- 3.19.16. Embedded environmental measures in relation to the water environment are set out in Table 26-20 of Chapter 26 of the ES [REP6-155]. The Applicant proposed over 90 water related commitments in the Commitments Register [REP6-227]. Key mitigation measures related to flood risk include:
- C-1 and C-9 committing to the onshore cable route being completely buried underground for its entire length, which would minimise interactions with the surface water environment, changes in surface water flow pathways and volumetric displacement of flood water.
 - C-5 and C-17 committing to trenchless crossings according to Appendix A - Crossing Schedule of the OCoCP. These measures would minimise silt laden contaminated runoff entering watercourses, changes in watercourse morphology and flow conveyance and would ensure appropriate crossing methodologies are in place.
 - C-117, C-118, C-119 and C-125 covering the method, timing and emergency plans for works in Flood Zones 2 and 3.

- C-131, C-132, C-179, C-180 covering management of stockpiles during construction to mitigate flood risk.
- C-182 dealing with consents for works near watercourses including Main Rivers.

3.19.17. Key mitigation measures to prevent accidental contamination entering groundwater or watercourses include:

- C-8 regarding, vehicle maintenance and refuelling.
- C-19 and C-27 regarding the onshore cable construction, in discrete sections and returned to previous conditions as far as reasonably possible.
- C-28 to take care that the existing land drainage regime is not compromised as a result of construction. A specialist drainage contractor / consultant would be engaged prior to construction to develop the pre and post-construction drainage plan on agricultural land. This would minimise silt laden / contaminated runoff entering watercourses, changes in flow rates / pathways and watercourse conveyance.
- C-30 for geotextiles or other membranes to temporarily control and minimise erosion or transport of sediment from construction sites in areas that are considered unprotected. This measure will minimise silt laden / contaminated runoff entering watercourses.
- C-293 regarding ground investigations and drainage design at the Oakendene substation site at the detailed design stage, including groundwater monitoring.

3.19.18. Key mitigation measures to protect existing abstraction sources include:

- C-29 assumes a depth of cover of 1.2m with deeper trenches which may be required at specific crossing locations such as watercourses. This measure will minimise the need for dewatering from trenched excavations, which will help limit potential effects upon groundwater availability.
- C-33 requires stage specific COCPs to include measures to minimise temporary disturbance to residential properties, recreational users and existing land users, including details of measures to protect these receptors.
- C-78 for licensed and private water supplies to be avoided where practicable; if any impacts are anticipated then appropriate measures would be put in place to avoid impact on the quantity and quality of the supply.
- C-137 requires all proposed onshore infrastructure and construction activities to be sited outside of the inner SPZ1 for the SWS public water supplies, with exceptions for light 4 X 4 construction access route crossing part of Warningcamp SPZ1 and minor passing places within the Patching SPZ1. Access routes would utilise existing tracks, roads, farm entrances etc as far as practicable, and where necessary no-dig solutions would also be utilised. There would be no storage of hazardous materials including chemicals, oils and fuels within any SPZ.
- C-253 A water quality monitoring programme would be carried out at private water supplies in proximity of the Order limits, for instance at Brookbarn Farm, Suzy Smith Racing / Angmering Park Estate and Michelgrove prior to during and post construction of the cable route. Further details of the monitoring regime would be discussed and agreed with Arun DC at the post DCO stage.

3.19.19. Key mitigation measures to support existing groundwater or surface water designated or undesignated sites or ecosystems include:

- C-229 Crossings of SDNPA designated Chalk streams would be designed to be less intrusive, for example by using a clear span bridge instead of a culvert to support the haul road or via use of trenchless crossing techniques. Open cut

cable crossings would be constructed and reinstated in as short a timeframe as practicable.

- 3.19.20. For the operational phase, the assessment identified effects ranging from negligible to minor adverse and deemed not significant.
- 3.19.21. Potential residual effects of decommissioning are covered by those listed for construction and operational effects. For the decommissioning phase, the assessment identified effects ranging from negligible to minor adverse and deemed not significant.
- 3.19.22. The ES chapter concludes that there would be no significant residual effects from the Proposed Development upon the water environment following the successful implementation of the mitigation measures and that there would be no significant cumulative, inter-related or transboundary effects [REP6-155].

Examination Issues

- 3.19.23. The main issues for the water environment in the Examination were:
- Application of the Sequential Test.
 - Application of the Exception Test.
 - Impacts of construction on flood risk.
 - Flood risk at the proposed Oakendene substation.
 - Proposed drainage works at the proposed Oakendene substation.
- 3.19.24. The potential effects of the Proposed Development on the sea defences and water neutrality featured as part of the IAPI set out by the ExA at the start of the Examination [PD-006, Annex C]. Other water aspects did not feature as part of the IAPI. Effects on sea defences are reported on as part of the Coastal Processes section of this Recommendation. The concerns regarding the method of trenching through Kitpease Copse in relation to public water supply is reported in the Terrestrial Ecology section of this Recommendation. Water neutrality is reported on in the HRA chapter of this Recommendation.

Application of the Sequential Test

- 3.19.25. The approach of the Applicant in relation to the evaluation of flood risk for the siting of the landfall, onshore buried cable route and permanent above ground infrastructure at the proposed substation locations, is described in paragraphs 9.1.21 to 9.1.40 of the FRA [REP4-039].
- 3.19.26. The FRA [REP4-039] states that the southwestern portion of the onshore cable corridor is sited within Flood Zones 2 and 3 and that the primary driver for the Proposed Development needing to pass through areas at medium and higher flood risk is the wider need for the development in the general location of Climping to Bolney. The Examination of the need and alternatives for the Proposed Development landfall, cable route and substation location in the proposed location is discussed and examined as part of the Alternatives section of this Recommendation.
- 3.19.27. The Applicant contends in the FRA [REP4-039 Paragraphs 9.1.24 and 9.1.25] that when refining the proposed onshore cable corridor location, the following high-level guiding principles were identified and covered the sequential approach to flood risk, whereby lower flood risk options were identified as preferable wherever possible:

- Selection of the shortest onshore cable route to minimise environmental effects through Proposed Development footprint between the landfall at Climping and potential onshore substation search areas near Bolney.
 - Minimising disruption by considering the proximity to residential properties.
 - Avoidance of key sensitive features where possible by the early adoption of commitments outlined in the Commitments Register.
 - Minimising disruption to sensitive features where possible by the early adoption of commitments outlined in the Commitments Register.
- 3.19.28. Considering the Sequential Test in relation to the landfall, the offshore cables would make landfall at Climping Beach, to the west of Littlehampton Harbour. Table 5-1 of the FRA [REP4-039] states there is a potential risk of flooding from tidal sources to portions of the Order limits associated with the open coast at Climping, the landfall location, and within the lower River Arun catchment. Section 9.1.17 to 9.1.20 of the FRA [REP4-039], discusses the choice of landfall location in relation to flooding from the sea and existing development along the coastline.
- 3.19.29. The FRA [REP4-039] notes that the landfall at Climping is the only feasible location for the offshore cable to make landfall. Other options would involve trying to thread the cable through or under areas of existing built development.
- 3.19.30. The FRA [REP4-039] discusses the risks of flooding from the sea at the landfall location at Climping in section 5.2.4. In section 5.7.21 the Applicant stated that on the basis that the onshore cable infrastructure would be flood resilient once constructed as it would be entirely buried, tidal flooding would not pose a risk during the operation and maintenance phase at Climping or in the floodplain of the River Arun and that consideration of the 2060 climate change allowance is therefore not necessary. Section 4.3.8 states that joint bays would be finished level with the ground surface with no raised structure and would be resilient to submergence once constructed.
- 3.19.31. The FRA [REP4-039] explains that to avoid interaction with the sea defence, trenchless crossing technologies would be used to cross under the beach and the shingle embankment coastal defence to the agricultural land beyond. Behind the landfall location in the agricultural land, the offshore cables would be joined to the onshore cables. The Applicant stated the landfall works are temporary anticipated to take around six months [REP4-039] and that the cable would be buried along its entire length.
- 3.19.32. The FRA [REP4-039] goes on to explain that the criteria for a suitable landfall includes sufficient physical space onshore, for the onshore cabling, transition joint bays and HDD drilling rig and construction logistical operations, and an unconstrained inshore area for when export cable laying vessels would come in close to shore. In addition to sufficient physical space at the landfall itself, the Applicant explains it is crucial that there is a workable onwards route towards the eventual grid connection point.
- 3.19.33. The EA responded to WQ FR1.1 [REP3-148] stating that it understood that the Proposed Development would be considered as Essential Infrastructure as defined by Annex 3 of the NPPF and confirming that it was satisfied with the content of the site-specific FRA having reviewed the information in relation to the issues within its remit [REP3-148].

- 3.19.34. Considering the Sequential Test in relation to the temporary construction and maintenance works for cable laying of the buried cable, the Applicant contends in Paragraph 9.1.40 of the FRA [REP4-039] that it considers the Sequential Test is passed due to the flood resilient nature of the onshore elements of the Proposed Development and wherever possible, the Proposed Development and associated temporary infrastructure has been sited in areas of lower flood risk, with full consideration of lower risk options before the development proposals were finalised.
- 3.19.35. West Sussex CC the LLFA stated in its response to WQ FR 1.7 in [REP3-073] that the areas with the lowest flood risk are likely to be the most populated areas along any proposed route, which could present difficulty in steering the cable route towards these areas. In addition, West Sussex CC stated [REP3-073] that all works, apart from permanent infrastructure, would be temporary in nature. The onshore cable route would be reinstated and, therefore, effects on surface water run-off and flooding would be temporary in nature.
- 3.19.36. The FRA [REP4-039] states that there is a region of high risk of surface water flood risk intersecting the temporary cable construction compound at Washington and that the anticipated maximum total construction duration is approximately four years. Horsham DC highlighted the surface water flood risk at the construction compound at Washington in its LIR [REP1-044]. The Applicant adds in Paragraph 10.1.9 [REP-4-039] that Commitment C-73 of the Commitments Register [REP6-227] requires all construction compounds to be sited in Flood Zone 1 and runoff rates from these areas would be limited to pre-development rates using appropriate sustainable drainage measures, delivered through site-specific drainage strategies incorporating SuDS principles.
- 3.19.37. Considering the Sequential Test in relation to the permanent above ground infrastructure, the Applicant stated in its Deadline 4 response that the only permanent above ground infrastructure would be the proposed onshore substation at Oakendene and extension at the Bolney substation [REP4-039]. Decisions regarding the choice of siting are outlined in section 9.1.36 [REP4-039]. The Applicant contends that once the choice of two potential onshore substation sites remained, whilst both were located in Flood Zone 1, the Wineham Lane North onshore substation search area was identified to be marginally preferable from a flood risk sequential approach perspective in respect to surface water flood risk.
- 3.19.38. The Applicant stated in its Deadline 4 response [REP4-039] that it was concluded in the PEIR (RED, 2021) that it would be possible to capture and convey surface water flow pathways in formal surface water management structures such that the risk at both sites would be comparable with respect to surface water flood risk. On this basis, the preference in terms of flood risk sequential approach for the two identified onshore substation search areas was considered to be marginal. The Applicant concluded in paragraph 9.1.38 [REP4-039] that the final selection of the Oakendene onshore substation, at marginally higher surface water flood risk than the Wineham Lane North substation search area option, was driven by other technical and engineering constraints.
- 3.19.39. The Applicant contends in paragraph 9.1.39 [REP4-039] that as suitable drainage and mitigation measures have been identified to demonstrate how surface water run-on and runoff can be managed sustainably on site, the Sequential Test is considered satisfied due to the flood resilient nature of the onshore elements of the Proposed Development and wherever possible, the Proposed Development and associated temporary infrastructure has been sited in areas of lower flood risk, with

full consideration of lower risk options before the development proposals were finalised.

- 3.19.40. The Applicant stated in paragraph 10.2.2 of the FRA [REP4-039] that it believed sufficient evidence had been provided to demonstrate that the Sequential Test has been passed, and that a sequential approach had been applied within the Order limits such that the vulnerable land uses would be located in Flood Zone 1 and have taken account of other sources of flooding. The Applicant stated that in accordance with the guidance in the NPPF, the Proposed Development is appropriate for the flood zone classification.
- 3.19.41. West Sussex CC, the LLFA, stated in its response to ExQ1 FR 1.7 in [REP3-073] that it considers the FRA [APP-216] updated at Deadline 6 [REP4-039] for the whole of the Proposed Development to be acceptable.
- 3.19.42. The EA confirmed in response to WQ FR 1.7 [REP3-148] regarding flood risk related to the Proposed Development as a whole that it is satisfied with the content of the site specific Flood Risk Assessment having reviewed the information in relation to the issues within its remit and had no further comments.
- 3.19.43. Horsham DC confirmed in [REP3-069] that it defers detailed commentary to West Sussex CC in its capacity as the LLFA but it is satisfied that the sequential test has been appropriately considered by the Applicant, as part of the site selection and design process. It stated the Applicant has demonstrated site selection, design and refinements of the projects had been an iterative process considering a range of matters.
- 3.19.44. The Deadline 6 version of the Statement of Commonality for SoCGs [REP6-247] indicates there are no parties with whom water related matters are not agreed and specifically states all matters as agreed in relation to the water environment between the Applicant and Arun DC, Horsham DC, Mid Sussex DC, West Sussex CC and the EA.
- 3.19.45. The SDNPA confirmed in its LIR [REP1-049] in section 6.32 that the SDNPA generally agreed with the conclusions of the Applicant's ES in relation to water and therefore, the proposal accords with SDLP policies SD17 and SD49.
- 3.19.46. Mid Sussex DC's closing position related to the water environment was confirmed in its signed SoCG with the Applicant at Deadline 5 [REP5-092] which stated agreement on all matters related to the water environment, specifically:
- Adequacy of the design parameters required in relation to climate change prior to undertaking detailed design for the National Grid Bolney Substation Extension Surface Water Drainage.
 - That Mid Sussex DC had raised concern regarding the risk of flooding at the National Grid Bolney Substation Extension because it is marked on maps, but at Deadline 5 it does not have flood risk concerns with the proposal.
- 3.19.47. The ExA did not consider it necessary to explore the matter further in the Examination as sufficient information had been received upon which to make a judgment.

Application of the Exception Test

- 3.19.48. The Applicant sets out evidence regarding the Exception Test in section 9.2 of the FRA [REP4-039].
- 3.19.49. The first part of the Exception Test to provide wider sustainability benefits to the community that outweigh flood risk, is set out in paragraphs 9.2.2 to 9.2.7 of the FRA [REP4-039] with the Applicant concluding that it is considered satisfied for the following reasons:
- Renewable electricity generation contributing towards meeting the urgent need for new energy infrastructure in the UK.
 - Environmental benefits through a commitment to deliver BNG of at least ten percent for all onshore and intertidal habitats subject to permanent or temporary losses as a result of the construction and operation of the Proposed Development.
 - Social and economic benefits from potential employment during construction.
- 3.19.50. The second part of the Exception Test requires the development to be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, reduce flood risk overall. This is discussed by the Applicant in paragraphs 9.2.9 to 9.2.13 of the FRA [REP4-039]. This states that the construction, enabling works and the onshore cable itself are considered to be essential infrastructure require the Exception Test to be passed in order to be considered 'appropriate' development in Flood Zones 3a and 3b. The Applicant concludes that the location of the cable in Flood Zones 3a and 3b is consistent with Exception Test requirements as the onshore cable infrastructure is resilient to flooding as it would be entirely buried, would not pose a safety risk, and would not cause an increase in flood risk elsewhere.
- 3.19.51. The EA stated [RR-116] that details of any flood mitigation would be required and that a Flood Risk Activity Permit (FRAP) would need to be obtained prior to the commencement of the landfall works. This issue was examined in WQ FR1.1 [PD-009]. The Applicant confirmed [REP3-051] that the appropriate FRAP would be obtained from the relevant authority prior to the commencement of any works in and around the Climping beach landfall site which are subject to permitting regulations, stating it would be the responsibility of the Contractor working on behalf of the Applicant to apply for and obtain the necessary permits and consents, including FRAPs from the EA, prior to commencing work in the locations that these are required. The Applicant confirmed the requirement for permitting is captured within Commitment C-17 set out in the Commitments Register [REP6-227].
- 3.19.52. In response to WQ FR1.1 in [REP3-148], the EA confirmed it has no concerns in relation to the application of the Exception Test.
- 3.19.53. West Sussex CC confirmed in its Deadline 6 Closing Position Statement [REP6-281] that is satisfied with the approach taken by the Applicant and with the second revision of the FRA [REP4-040]. Particular reference was made to the addition of Commitment C-118 for the production of an Emergency Response Plan for flood events to address residual risks, which had been a key concern of West Sussex CC as LLFA [REP1-054] and Horsham DC [REP1-044] in their LIRs. In addition, West Sussex CC confirmed that the Outline Operational Drainage Plan (OODP) [REP4-042], is agreed.

Impacts of construction on flood risk

- 3.19.54. NE raised in its Risk and Issue log [REP1-059a point J110] that stockpiles should not be positioned adjacent to watercourses. Concern was raised by the EA [RR-116] and West Sussex CC [REP1-054] as the LLFA, regarding the location of stockpiles during construction which could potentially influence the flow pathways during periods of flooding. The Applicant responded at Deadline 2 to West Sussex CC's LIR [REP2-020] Ref 16e to confirm that Commitments C-130, C-131, C-132, C-179, C-180 and C-133 in the Commitments Register [REP1-015] updated at Deadline 6 [REP6-227] provide provisions to ensure that soil stockpiles do not impact the existing natural surface water flow paths.
- 3.19.55. West Sussex CC's LIR [REP1-054], stated that special consideration of construction works in the Poling and Hammerpot area would be required as the area was prone to winter ground water flooding. The Applicant responded at Deadline 2 [REP2-020] noting this concern confirming this area was at risk of flooding from both groundwater and fluvial sources as noted in Paragraphs 5.5.4, 5.5.5 and 5.5.11 the FRA [APP-216] updated at Deadline 4 [REP4-039] confirming that the measures already set out would be sufficient to manage the identified risks from groundwater and winter flooding in this area, and that no additional measures would be necessary.
- 3.19.56. West Sussex CC raised concern in its LIR [REP1-054] that detailed design should consider surface water flow routes and that temporary haul roads and accesses are constructed as designed to avoid incorrectly constructed haul roads cutting off surface water flow paths. It also raised that the timing of the works would need to be considered fully so that localised flood risk was not increased.
- 3.19.57. The Applicant responded at Deadline 2 [REP2-020] stating that Commitment C-181 in the Commitments Register [REP1-015] updated at Deadline 6 [REP6-227] states that access roads would have cross drainage provided necessary at topographic low points so that the existing natural surface water flow paths would be retained and that Commitment C-117 specifically cover the matter of timing to avoid known flooding periods.
- 3.19.58. The ExA did not consider it necessary to explore the matter further in the Examination as sufficient information had been received to make a judgement.

Flood risk at the proposed Oakendene substation

- 3.19.59. Concerns were raised by a number of IPs in RRs and WRs regarding flood risk at the proposed onshore substation at Oakendene. These included Mr Smethurst [REP1-115 to REP1-119] and Ms Davies [REP1-159], CvR [REP1-087 and REP1-089] and West Sussex CC in its LIR [REP1-054]. The Applicant responded at Deadline 2 [REP2-028 to REP2-030] and [REP2-020] to address comments raised.
- 3.19.60. The issue was discussed at ISH1 [REP1-033], agenda item 4vi [EV3-001]. The Applicant's detailed response to hearing questions is documented in the Applicant's Post Hearing Submission – [REP1-033] and response to Action Point 20 in [REP1-023].
- 3.19.61. Clarification was sought by the ExA on which Flood Zone the proposed substation at Oakendene would be in, due to a concern raised by Mr Smethurst, as although the Applicant had stated it would be in Flood Zone 1, the scale of the mapping provided in Figure 16.2.2 of the original FRA [APP-216] did not clearly show the site

in relation to the Flood Zone maps in sufficient detail. The Applicant confirmed in section 2.2 of Appendix E: Oakendene Flood Risk and Drainage Applicant Responses in Applicant's Responses to ExA WQs [REP3-051] that the proposed onshore substation site at Oakendene and the temporary construction compound to the west are entirely within Flood Zone 1, illustrated by Figure 1 in Annex B of that document [REP3-051]. West Sussex CC the LLFA also confirmed the site is in Flood Zone 1 in its response to ExQ1 FR 1.4 in [REP3-073].

- 3.19.62. Concern regarding the limitations of the EA's fluvial flood maps and existence of a surface water flow route indicated north to south through the proposed Oakendene substations site was raised by several IPs including CvR [REP1-087] and Mr Smethurst who submitted evidence into the Examination regarding surface water flooding at Oakendene in the form of a detailed description with photographs and videos [REP1-115 to REP1-119]. The Applicant recognised this in its response [REP3-051], stating that the EA Flood Zone mapping could indicate a lower probability of flood risk at the onshore substation site than the Applicant considers representative of the characteristics of the site, given the proximity of the ordinary watercourse along the southern boundary. The Applicant stated [REP3-051] that the lack of any Flood Zone 2 or 3 definition associated with the ordinary watercourse to the south of the onshore substation site at Oakendene was a function of the EA's approach to modelling of the watercourse network which excludes representation of the Ordinary Watercourse, rather than there not being any flood risk from the watercourse. The Applicant stated in paragraph 2.2.5 Appendix E [REP3-051], that this has been acknowledged during the assessment of flood risk, leading to the precautionary approach taken in Appendix 26.2: Flood Risk Assessment, Volume 4 of the ES [APP-216].
- 3.19.63. Concern was raised by West Sussex CC in its PADS [AS-008], RR [RR-418 section 3.15] and by Horsham DC in its PADS [AS-010], that proposals for the Oakendene substation did not truly reflect the winter flooding at this location, possibly because local groundwater conditions had not been considered and West Sussex CC advised that winter monitoring of groundwater levels should be carried out. Following engagement with West Sussex CC, the Applicant, added a new commitment (C-293) in the Commitment's Register [REP6-227] to undertake ground investigation and groundwater monitoring at the substation site at the detailed design stage. At Deadline 4, West Sussex CC, as LLFA, confirmed it was satisfied with the wording of commitment C-293 [REP4-086 paragraph 3.15].
- 3.19.64. West Sussex CC as the LLFA, raised in its LIR [REP1-054] that works should not increase existing surface water flood risk elsewhere. In its response to WQ FR 1.4 [REP3-073], West Sussex CC confirmed that the Proposed Development at Oakendene, if designed correctly, would not increase flood risk elsewhere as the current design would attenuate flow within the site boundary, mitigating potential flood risk to downstream receptors. This response also confirmed that as no development is proposed within existing floodplain areas, there should be no loss of net flood plain storage. West Sussex CC confirmed the detailed design post-consent would be checked to ensure greenfield runoff rates are maintained and that the FRA and Drainage Strategy for the Oakendene substation site would require further development once groundwater monitoring or winter monitoring of water levels has taken place.
- 3.19.65. At Deadline 5, West Sussex CC stated [REP5-134] that it was satisfied with the second revision of the FRA which recognises the risk of surface water flooding at the Oakendene substation and includes Commitment C-118 for the production of an

Emergency Response Plan for flood events to address residual risks. West Sussex CC add that it is important that the Emergency Response Plan is available to all IPs and that it is kept up to date with regards to any changes to guidance and future emergency contacts.

- 3.19.66. West Sussex CC confirmed in its Deadline 6 Closing Position Statement [REP6-281] that it was satisfied with the approach taken by the Applicant and with the second revision of the FRA [REP4-040], which now includes the production of an Emergency Response Plan for flood events to address residual risks, which were key concerns of West Sussex CC as LLFA. In addition, West Sussex CC confirmed that the OODP [REP5-062], is agreed.
- 3.19.67. Horsham DC confirmed in its Deadline 6 Closing Position Statement [REP6-279] that its final position on flood matters reflects that of West Sussex CC as the LLFA.

Proposed drainage works at the proposed Oakendene substation

- 3.19.68. Questions were raised by some IPs including Mr Smethurst [REP1-115 to REP1-119] regarding the adequacy of the drainage designs, particularly how the proposed drainage would operate at time of flood and high water levels in the Cowfold Stream and whether there would be sufficient storage capacity. West Sussex CC raised in its LIR [REP1-054] that drainage proposals should prioritise the use of SuDS.
- 3.19.69. This issue was discussed during ISH1 [REP1-033] to which the Applicant provided a written summary [REP1-033] and provided a response to action point 20 from ISH1 [EV3-020] in [REP1-023] regarding site levels in relation to flood risk.
- 3.19.70. The ExA asked in WQ FR 1.2 [PD-009] for further details of the drainage proposals for the Oakendene substation. The Applicant responded at Deadline 3 [REP3-051] in Appendix E, stating in paragraphs 1.2.2 and 1.2.3 that the indicative SuDS and OODP [APP-223] updated at Deadline 5 [REP5-062], included an over-provision of potential attenuation capacity. The Applicant added that a flexible and precautionary approach was applied in the application to flood risk from the Cowfold Stream, defined as an Ordinary Watercourse. The Applicant confirmed [REP3-051] that the draft DCO committed the Applicant to further modelling being undertaken at the detailed design stage, secured via Requirement 17 for the OODP, and via adherence to National Grid's target guidance for flood resilience in accordance with commitment C-230 secured via Requirement 8 (2) within the draft DCO [REP6-007].
- 3.19.71. The Applicant stated [REP3-051] that in practice, it is anticipated that, upon detailed modelling, both the attenuation volumes and flood levels in the ordinary watercourse would be found to be lower than considered in the ES [REP4-039] and in the OODP [REP5-062].
- 3.19.72. In order to respond to ExA WQ FR 1.2 [PD-009] part a) to explain how the proposed drainage from the site would operate at times when the ordinary watercourse to the south of the site is in flood, the Applicant stated it had commenced some of the initial drainage and hydraulic modelling tasks that would contribute towards the detailed design but that the information provided should not be considered in any way to be part of the detailed design. Instead, the additional information seeks to further demonstrate that an appropriate solution to flood risk and drainage matters could be delivered at the detailed design stage, whilst adhering to the design principles set out in the FRA [REP4-039] and OODP [REP4-041] updated at

Deadline 5 [REP5-062], including to ensure no net loss of floodplain storage and to maintain greenfield runoff rates.

- 3.19.73. Paragraph 1.2.16 [REP3-051], provides details from the Applicant of the flood and drainage model scenarios undertaken which resulted in no encroachment of flood water into the floodplain, when it was run for several scenarios including climate change factors with discharges held at greenfield rates. The Applicant confirmed this indicated that there would be sufficient storage within the attenuation basins to accommodate surface water runoff from the onshore substation site despite a reduced discharge rate when the outfall is submerged.
- 3.19.74. The Applicant's response in paragraphs 1.2.21 to the ExA's WQ FR 1.2b [REP3-051] concluded that there would be sufficient space for the required attenuation storage to ensure no net loss of floodplain storage and to maintain greenfield runoff rates, within the Order limits. The need to site all permanent development, including the attenuation basin footprints, outside of the floodplain is set out in commitment C-75 and would be secured via the stage specific CoCP via Requirement 22 of the DCO. Paragraph 1.2.26 states that basins of sufficient capacity could be delivered within the available space between the southern boundary of the onshore substation footprint and the 0.1% annual exceedance probability (AEP) flood extent, and that that there is sufficient attenuation volume available within the basins to maintain runoff at greenfield rates, without any loss of floodplain storage even considering the impacts of a severe flood event within the watercourse south of the onshore substation site.
- 3.19.75. The Applicant stated in Paragraph 1.2.29 [REP3-051] that it is anticipated that there would be no deflection or constriction of flood flow routes associated with the ordinary watercourse to the south of the onshore substation site and that all development, including any raises in ground level, have been indicated outside of the EA's 0.1% AEP Risk of Flooding from Surface Water flood extent for the ordinary watercourse (as agreed with Horsham DC and West Sussex CC to be a suitable proxy for the 1% AEP plus climate change event).
- 3.19.76. The Applicant stated in Paragraph 1.2.31 [REP3-051] that the management of surface water flow pathways at the onshore substation site at Oakendene were considered as part of the Indicative Drainage Layout. Measures have been indicated in the Indicative SuDS Plan, provided in Appendix A of OODP [REP5-062] specifically to manage the flow pathways as part of the Drainage Strategy, such that any deflection and/or constriction is intentional to safely manage flows within the onshore substation site (to reduce flood risk in parts of the onshore substation site to be developed for other uses), and to avoid any increase in flood risk elsewhere. The final design of the flood and drainage mitigation measures (including where intentional deflection and/or constriction of surface water flow pathways would be implemented to manage surface water) would be determined at the detailed drainage design stage and are secured via Requirement 17 for surface and foul) water drainage in the draft DCO [REP6-007].
- 3.19.77. West Sussex CC as the LLFA, stated in its submission at Deadline 4 [REP4-086 Paragraph 3.14] that the Applicant's OODP [REP3-023] updated at Deadline 5 [REP5-062], adequately addressed its questions and concerns and that the Applicant's commitments would be monitored during the detailed design and construction phases. West Sussex CC reconfirmed at Deadline 5 in [REP5-134] that the surface water flood risk at Oakendene was recognised in the OODP [REP5-062]. The ExA did not consider it necessary to explore this matter further in the

Examination as sufficient information had been received upon which to make a judgement.

Other matters

Crossing method for watercourses

- 3.19.78. West Sussex CC acknowledged in its LIR [REP1-054] that the Applicant had committed that all main rivers would be crossed by trenchless crossings to avoid likely impacts, but noted the Construction Method Statements should consider contingency measures in the event of HDD failure or frac out. The Applicant responded [REP2-020] stating Requirement 22 (5) of the draft DCO secures a CoCP which covers an emergency response plan and a pollution prevention plan and pollution incident response plan.
- 3.19.79. In addition, the EA confirmed it was satisfied with the Applicant's suggested approach to watercourse crossings and the details secured by Requirement 22, in response to WQ WE 1.3 in [REP3-148].
- 3.19.80. The ExA did not consider it necessary to explore this matter further in the Examination as sufficient information had been received upon which to make a judgement.

Working in proximity to watercourse banks

- 3.19.81. West Sussex DC raised in its PADS [AS-008] that the draft DCO [APP-019] did not adequately cover works close to Ordinary Watercourses which are managed by West Sussex CC as the LLFA and that any works in, under, over or within 8m of any Ordinary Watercourse, would require consent from them. The Applicant confirmed in the SoCG at Deadline 6 [REP6-255] between the Applicant and West Sussex DC, that the requirement for Ordinary Watercourse consent (OWC) is outlined by the Applicant in Commitments C-182, C-126, C-17 in the Commitments Register [REP6-227] and it was confirmed that this issue was now agreed.

Adherence with the Local Flood Risk Management Strategy

- 3.19.82. West Sussex CC stated [REP3-073] in response to ExA WQ FR 1.6 that the current 'Local Flood Risk Management Strategy' for the County's administrative area did not cover design requirements for large scale infrastructure projects. Apart from cable route construction within the existing floodplain, which would require consent from the EA, permanent construction is not being proposed within identified surface water flood risk areas.
- 3.19.83. West Sussex CC's response to ExA WQ FR 1.4 stated that the planning process would ensure that any design follows 'best practice' and any proposed maintenance is appropriate for the drainage elements constructed [REP3-073].
- 3.19.84. The ExA did not consider it necessary to explore this matter further in the Examination as sufficient information had been received upon which to make a judgement.

Flooding concerns regarding the construction of the cable route at College Wood Farm

- 3.19.85. Mr Dickson submitted photographs into the Examination at Deadline 4 [REP4-131] to illustrate annual seasonal flooding at College Wood Farm, stating that all drainage across the site is facilitated through a series of land drains, with at least two intersected by the Applicant's proposed route. The ExA has not seen a response from the Applicant to these photographs, but this has not affected the ExA findings on this matter.

Potential conflict with drainage route from housing development to the west of Church Lane

- 3.19.86. Clymping PC raised a concern [RR-075] that the area south of Field Place is the sole drainage route from the strategic development of 300 homes on the western side of Church Lane and its SuDS scheme. The RR stated that the development site had suffered severe surface water flooding in the past, with run-off across Church Lane resulting in flooding of the grounds of Field Place.
- 3.19.87. The Applicant responded [REP1-017] that drainage from the proposed Climping strategic housing site (Application Reference CM/48/21/RES/) would discharge via an existing culvert beneath Church Lane and to a drainage ditch that runs west to east between the temporary construction compound (to the south) and access track A-06 (to the north). A CEA was carried out as reported in Table 26-32 [APP-067] which concluded that no likely significant cumulative effects would arise from the strategic housing site in combination with the Proposed Development.
- 3.19.88. The Applicant confirmed [REP1-017] a Construction Phase Drainage Plan would be developed by the contractor(s) to determine potential location specific risks in relation to the water environment and identify appropriate measures to avoid or reduce risk. The Construction Phase Drainage Plan is secured via Requirement 22 of the draft DCO [REP6-007]. The Applicant confirmed the following embedded environmental measures in the Commitments Register [REP6-227] would be of relevance to ensure that the existing functionality and conveyance capacity of the drainage ditch would not be compromised, secured via Requirement 22 of the draft DCO [REP6-007]; C-28 (existing land drainage regime), C-30 (erosion and sediment control), C-73 (drainage design for surface water), C-119 & C-175 (temporary construction areas and flood conveyance), C-126 (temporary watercourse crossings), C-130 (soil stockpile standoff distances), C-179 (soil stockpiling and management of surface water), C-181 (access roads and management of surface water), and C-182 (watercourse consents). The Applicant confirmed that the implementation of these embedded environmental measures in combination with those proposed on the third party housing site are envisaged to avoid any significant cumulative effects on the shared drainage regime.
- 3.19.89. The ExA did not consider it necessary to explore this matter further in the Examination as sufficient information had been received upon which to make a judgement.

Potential effects on water quality in the River Adur

- 3.19.90. The EA confirmed at Deadline 3 [REP3-148] that it wishes to be consulted on the Applicant's Pollution Prevention Plan to mitigate the risk of pollution to the River Adur to be included in the stage specific CoCP post-consent and confirmed it had no further comment in response to WQ WE 1.2 in [REP3-148].

- 3.19.91. The Applicant responded at Deadline 4 [REP4-079] stating that Requirement 22 within the draft DCO [REP-007] stipulates that the EA must be consulted on the CoCP prior to work on land commencing and that Requirement 22 (4) also stipulates that CoCP must accord with the OCoCP and include, as appropriate to the relevant stage pollution prevention plan and pollution incident response plan.

Contaminated land hotspots to controlled waters

- 3.19.92. The EA stated [RR-116] that it was generally satisfied with the geo-environmental desk study, and that it considered the historic contamination risks associated with the study area low. However, the EA did raise some concerns regarding potential hotspots of contamination, particularly at landfill sites. The EA stated [RR-116] that any works associated with the Proposed Development must not compromise any containment features of landfills or create preferential pathways for contaminants within the landfill to offsite receptors, including to controlled waters.

- 3.19.93. The Applicant responded at Deadline 1 [REP1-017] stating that the OCoCP [PEPD-033 updated at Deadline 6 REP6-224], secured via Requirement 22 of the draft DCO [REP6-007], outlines the Applicant's commitment that historical landfills would be subject to further contamination assessment, post-DCO consent, and that appropriate remediation would be implemented where required in line with the EA's guidance on land contamination and risk management. This is secured through Requirement 25 of the draft DCO [REP6-007]. The EA confirmed is satisfied with the Applicant's suggested approach to securing management of the risk of contaminated land hotspots to controlled waters in the draft DCO in response to WQ TE 1.34 in [REP3-148]. The ExA did not consider it necessary to explore this matter further in the Examination as sufficient information had been received upon which to make a judgement.

Borehole decommissioning

- 3.19.94. The EA raised [RR-116] that if a borehole would be lost as part of the development, then it should be suitably decommissioned and backfilled, prior to constructions and that this must be done to ensure it does not represent a rapid pathway to any underlying aquifers. The Applicant responded [REP1-017] stating that where boreholes are installed by the Applicant or found to be present onsite prior to construction, these would be decommissioned in line with the EA's good practice documents. The Applicant considers that this forms part of the approach contained within the OCoCP [PEPD-033 updated at Deadline 6 [REP6-224] to ensure land is suitable for the proposed use in line with the EA guidance and would be secured via Requirement 22 of the draft DCO [REP6-007]. The ExA did not consider it necessary to explore this matter further in the Examination as sufficient information had been received upon which to make a judgement.

Private water supplies

- 3.19.95. Arun DC raised a concern in its LIR [REP1-039 point 4.14] that monitoring of private water supplies should be long term for both microbiological and chemical parameters. The Applicant responded at Deadline 2 [REP2-021] stating that Commitment C-253 allows for a water quality monitoring programme at PWSs for "an appropriate period" prior to, during and post construction of the cable route and that further details of the monitoring regime would be discussed and agreed with Arun DC at the post consent stage, including sampling locations, analytical suites and period of monitoring.

- 3.19.96. The ExA sought to further understand a number of aspects in regards to this matter, including on what basis these water supplies would be considered for inclusion in the water quality monitoring programme, the quantitative definition of "in close vicinity of the Proposed Development" and "in proximity of the Order limits" in Commitment C-253 of the Commitments Register [REP1-015], whether Commitment C-253 included both microbial and chemical parameters within the water quality monitoring programme and for how long the water quality monitoring programme would continue.
- 3.19.97. The Applicant responded at Deadline 3 [REP3-051], stating that at the post-consent stage, a check of the latest private water supply data would be carried out via engagement with Arun DC. The Applicant confirmed that in the event that any additional water supplies are identified within 250m of the Order limits, or others which are considered to be potentially hydraulically at risk and conceptually linked to the Proposed Development, would also be considered for inclusion in the water quality monitoring programme. The Applicant confirmed this is secured through the OCoCP [PEPD-033] updated at Deadline 6 [REP6-224] via Requirement 22 of the draft DCO. In addition, the Applicant confirmed [REP3-051] that further details of the monitoring regime and analytical suites for private water supply monitoring would be discussed and agreed with Arun DC. The Applicant stated that the suite would be properly and appropriately regulated and would cover various microbial and chemical parameters, with the duration of the monitoring discussed and agreed with Arun DC.
- 3.19.98. The EA responded to ExA WQ WE 1.4 at Deadline 3 [REP3-148], stating it was satisfied that 250m would be a reasonable distance to use to identify private water supplies in proximity of the Order limits in Commitment C-253 of the Commitments Register [REP6-227], stating and that it would expect all sites to be monitored, unless agreed in writing following risk assessment which demonstrates a negligible risk to a supply. The ExA did not consider it necessary to explore this matter further in the Examination as sufficient information had been received upon which to make a judgement.

Compliance with the WFD

- 3.19.99. The EA confirmed [RR-116] it was satisfied with the WFD assessment provided [APP-217]. The EA confirmed all its potential concerns had been adequately addressed in the WFD assessment.
- 3.19.100. At the close of the Examination, the Applicant's SoCG with the EA [REP5-095] confirmed that all points of discussion related to the water environment had been agreed. The final SoCG with NE [REP6-266] stated that all matters had been agreed between the Applicant and NE in relation to the water environment. There were no outstanding concerns from NE relating to the water environment in its Risk and Issues Log at Deadline 6 [REP6-296].
- 3.19.101. The final SoCG with West Sussex CC, the LLFA [REP6-255] that all matters had been agreed between the Applicant and West Sussex CC in relation to the water environment.
- 3.19.102. The ExA was satisfied that the Applicant had provided adequate responses to all other matters raised in relation to the water environment.

ExA Findings

- 3.19.103. The ExA has considered the effects of the Proposed Development on the water environment in the context of the policy framework set by the Overarching National Policy Statement for Energy (NPS EN-1 2011 and 2024), the National Policy Statement for Renewable Energy Infrastructure (NPS EN-3 2011 and 2024).
- 3.19.104. Section 5.7 of NPS EN-1 2011 and section 5.8 of NPS EN-1 2024 relates to flood risk.
- 3.19.105. NPS EN-1 2011 and NPS EN-1 2024 seek to direct energy infrastructure to areas of lower flood risk from all sources of flooding where possible, following the Sequential Test and Exception Tests where applicable. If having followed these steps, energy infrastructure is exceptionally necessary in areas of flood risk, the infrastructure must be safe for the duration of its lifetime, taking account of the vulnerability of its users, without increasing flood risk elsewhere, reducing flood risk overall and adopting appropriate mitigation measures within the design to address any remaining flood risk concerns. Priority should be given to the use of SuDS such that the volumes and peak flow rates of surface water leaving the site are no greater than the rates prior to the proposed project. The infrastructure must be appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed over the lifetime of the development.
- 3.19.106. Paragraph 5.7.3 of NPS EN-1 2011 states that development and flood risk from all sources of flooding must be taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding. Where new energy infrastructure is, exceptionally, necessary in such areas, policy aims to make it safe without increasing flood risk elsewhere and, where possible, by reducing flood risk overall. NPS EN-1 2024 adds greater emphasis for the need for flood risk management from all sources of flooding, as a result of the effect of climate change that is already being seen.
- 3.19.107. In terms of construction work, paragraph 5.7.10 of NPS EN-1 2011 states that the decision maker will need to be satisfied that the proposed drainage system complies with any National Standards and that the DCO makes provision for the adoption and maintenance of SuDS.
- 3.19.108. NPS EN-1 2011 Section 5.15.1 recognises that infrastructure can have adverse effects on the water environment. It states that the effects could lead to adverse impacts on health or on protected species and habitats and could result in surface waters, groundwaters or protected areas failing to meet environmental objectives established under the WFD. Where the project is likely to have effects on the water environment applicants should undertake an assessment addressing water quality, water resources and physical characteristics of the water environment, (Paragraph 5.15.2).
- 3.19.109. NPS EN-1 2011, Paragraph 5.7.4 and NPS EN-1 2024 Paragraph 5.8.13 state that applications for energy projects of 1 hectare or greater in Flood Zone 1 and all proposals located in Flood Zones 2 and 3 in England should be accompanied by a Flood Risk Assessment (FRA), which should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks would be managed, taking climate change into account. The Secretary of State should not consent development in Flood Zone 3 unless they are satisfied that the

Sequential and Exception Test requirements have been met, (NPS EN-1 Paragraph 5.7.12).

- 3.19.110. NPS EN-1 2024 adds more detail as to what is required when considering and assessing the effect of a Proposed Development on drainage systems. NPS EN-1 2024 introduces new text confirming:
- Development (including construction works) will need to account for any existing watercourses and flood and coastal erosion risk management structures or features, or any land likely to be needed for future structures or features so as to ensure:
 - Access, clearances and sufficient land are retained to enable their maintenance, repair, operation, and replacement, as necessary.
 - Their standard of protection is not reduced.
 - Their condition or structural integrity is not reduced (NPS EN-1 2024 Paragraph 5.8.17).
 - Where possible, applicants are encouraged to manage surface water during construction by treating surface water runoff from exposed topsoil prior to discharging and to limit the discharge of suspended solids, (NPS EN-1 2024 Paragraph 5.16.5).
 - Applicants are encouraged to consider protective measures to control the risk of pollution to groundwater beyond those outlined in Water Resource Management Plans, (NPS EN-1 2024 Paragraph 5.16.6).
 - In terms of the WFD Regulations 2017, the overall aim of development should be to prevent deterioration in status of water bodies to support the achievement of the objectives in the River Basin Management Plans and not to jeopardise the future achievement of good status for any affected water bodies, (NPS EN-1 2024 Paragraph 5.16.7).
- 3.19.111. NPS EN-1 2011 states that the decision maker should be satisfied that:
- The application is supported by an appropriate FRA.
 - The Sequential Test has been applied as part of site selection.
 - A sequential approach has been applied at the site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk.
 - The proposal is in line with any relevant national and local flood risk management strategy.
 - Priority has been given to the use of sustainable drainage systems.
 - In flood risk areas the project is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed over the lifetime of the development.
 - Development is not granted consent in Flood Zone 2 in England unless it is satisfied that the sequential test requirements have been met. It should not consent development in Flood Zone 3 or Zone C unless it is satisfied that the Sequential and Exception Test requirements have been met.
- 3.19.112. NPS EN-1 2024 adds that the Secretary of State should be satisfied that:
- Where relevant land that is likely to be needed for present or future flood risk management infrastructure has been appropriately safeguarded from development to the extent that development would not prevent or hinder its construction, operation or maintenance.

- Essential energy infrastructure should only be consented in Flood Zone 3b the Functional Floodplain if the development would not result in a net loss of floodplain storage and would not impede water flows.
 - Where an increase in flood risk elsewhere cannot be avoided or wholly mitigated, the Secretary of State may grant consent if they are satisfied that the increase in present and future flood risk can be mitigated to an acceptable and safe level and taking account of the benefits of, including the need for, nationally significant energy infrastructure. In any such case the Secretary of State should make clear how, in reaching their decision, they have weighed up the increased flood risk against the benefits of the project, taking account of the nature and degree of the risk, the future impacts on climate change, and advice provided by the EA and other relevant bodies.
- 3.19.113. NPS EN-1 2024 in section 5.16 outlines policy regarding water quality and resources. Paragraph 5.16.14 states that the Secretary of State must refuse development consent where a project is likely to cause deterioration of a water body or its failure to achieve good status or good potential, unless the requirements set out in Regulation 19 of the WFD are met. A project may be approved in the absence of a qualifying Overriding Public Interest test only if there is sufficient certainty that it will not cause deterioration or compromise the achievement of good status or good potential.
- 3.19.114. NPS EN-3 2024 and NPS EN-5 2024 are largely consistent with the 2011 versions in regards to flood risk, water quality and water resources.
- 3.19.115. Other policies which are important and relevant are:
- The Water Framework Directive.
 - The EU Groundwater Directive.
 - Flood and Water Management Act 2010.
 - Water Resources Act 1991, Water Act 2003 and The Environmental Permitting (England and Wales) Regulations 2016.
 - NPPF.
- 3.19.116. The ExA has considered all the information submitted in the Examination in light of concerns raised regarding surface water flow paths and incidents of high groundwater at the proposed substation location at Oakendene. Given the confirmation by West Sussex CC as the LLFA that the Proposed Development at Oakendene, if designed correctly, would not increase flood risk elsewhere and there should be no loss of net flood plain storage [REP3-073], the ExA is satisfied that the flood risk in this location has been adequately assessed by the Applicant in the ES and the updated FRA taking into account all sources of flooding.
- 3.19.117. The ExA notes the added Commitment by the Applicant, C-293 in the Commitments Register [REP6-227], secured by Requirement 17 to undertake future groundwater monitoring at this location with which the LLFA has confirmed it is satisfied [REP4-086 paragraph 3.15]. The ExA acknowledges that West Sussex CC confirmed that the FRA and Drainage Strategy for the Oakendene substation site would require further development once groundwater monitoring or winter monitoring of water levels has taken place and detailed design post-consent would be checked to ensure greenfield runoff rates are maintained.
- 3.19.118. The ExA advanced changes to Requirement 8 in the ExA Schedule of Changes to the draft DCO [PD-013], so that the Applicant should provide a site-specific plan for

Oakendene rather than it being spread amongst other Requirements, which included, amongst other things, details required for operation and maintenance, water usage and site drainage. The Applicant responded at Deadline 5 [REP5-121] stating that as drainage matters were an operational matter rather than construction, it would not fit within the needs of Requirement 8 and instead already sits within Requirement 17. The ExA accepted this explanation.

- 3.19.119. The ExA notes the Applicant has included measures in the Indicative SuDS Plan, provided in Appendix A of OODP [APP-223] updated at Deadline 5 [REP4-062] specifically to manage the flow pathways as part of the Drainage Strategy, to safely manage flows within the onshore substation site, to reduce flood risk in parts of the onshore substation site to be developed for other uses, and to avoid any increase in flood risk elsewhere.
- 3.19.120. The ExA is content that the final design of the flood and drainage mitigation measures, including that of surface water flow pathways, would be determined at the detailed drainage design stage, and are secured via Requirement 17 in the draft DCO [REP6-007]. The ExA is also content that the effects on surface water flow paths from stockpiles and haul roads are adequately controlled through measures secured in the draft DCO [REP6-007].
- 3.19.121. The ExA is content that the Applicant has demonstrated that an Emergency Response Plan for flood events to address residual risks, which was a key concern of the LLFA, has been addressed through Commitment C-118 secured by Requirement 22 of the draft DCO. The ExA is satisfied that all concerns regarding flood risk at the proposed Oakendene substation location raised by IPs have been adequately addressed by the Applicant, including issues raised in the LIRs and by West Sussex CC as the LLFA.
- 3.19.122. The ExA has considered the detailed responses by the Applicant to ExA WQ FR 1.2 and the results of the provisional flood modelling undertaken and is content that the Applicant has demonstrated to an acceptable standard, given the provisional information, that the drainage system could be designed to allow sufficient storage within the attenuation basins to accommodate surface water runoff from the onshore substation site, despite a reduced discharge rate when the outfall is submerged. Therefore, the ExA is satisfied that concerns raised by IPs regarding how the proposed drainage would operate at time of flood and high water levels in the Cowfold Stream and whether there would be sufficient storage capacity, have been adequately addressed by the Applicant.
- 3.19.123. The ExA is satisfied that all concerns raised regarding the flood risk and proposed drainage works at the Oakendene substation location raised by IPs have been adequately addressed by the Applicant.
- 3.19.124. The ExA has considered the application of the Sequential Test to the three distinct parts of the Proposed Development, the landfall, onshore buried cable route and the permanent above ground infrastructure at the substation locations.
- 3.19.125. As the cable route would be buried for its entire length, and the Applicant confirms in the FRA [REP4-039] that joint bays would be finished level with the ground surface with no raised structure and would be resilient to submergence once constructed, the ExA agrees consideration of flood risk at landfall and the cable route is only for the construction period. The ExA is content with the Applicant's explanation that the southwestern portion of the buried onshore cable corridor is

unavoidably sited within Flood Zones 2 and 3 associated with the River Arun [REP4-039] as the landfall location is bounded by regions of developed areas to the east and west, and therefore is the only feasible location for the offshore cable to make landfall for a grid connection at Bolney. The choice of grid connection at Bolney is discussed in the Alternatives section of this Recommendation. The ExA is satisfied that sufficient physical space is available for the onshore cabling, transition joint bays and HDD drilling rig and construction logistical operations and that the Climping construction compound has been located in a lower area of flood risk as far as is reasonably possible given the constraints. The ExA notes that the EA understood that the Proposed Development would be considered as Essential Infrastructure as defined by Annex 3 of the NPPF and confirmed it is satisfied with the content of the site-specific FRA [REP3-148] and that Commitment C-17 set out in the Commitments Register [REP6-227] secured the requirement for the engaged Contractor to secure any necessary FRAPs from the EA. The ExA has no reason to disagree with the EA in relation to this.

- 3.19.126. Considering the buried cable route, the ExA agrees with West Sussex CC, the LLFA who stated that it would be difficult to steer any proposed route towards areas with the lowest flood risk, as these areas are likely to be the most populated areas along any proposed route.

- 3.19.127. Regarding the location of temporary construction compounds, the ExA notes that Commitment C-73 [REP6-227] requires all temporary construction compounds to be sited in Flood Zone 1 and runoff rates from these areas would be limited to pre-development rates using appropriate sustainable drainage measures, delivered through site-specific drainage strategies incorporating SuDS principles. In addition, the ExA notes that paragraph 6.4.21 of the FRA [REP4-039] identifies a region of high risk of surface water flood risk intersecting the temporary construction compound at Washington, indicated in Figure 26.2.9 and Figure 26.2.5c [REP4-039]. The ExA considers the surface water flow pathway appears to be located to the far west of the compound area, outside the extent of the compound and is therefore content that the choice of construction compound location has been located away from an area of higher flood risk as far as possible at this location.

- 3.19.128. Regarding the location of stockpiles along the cable route during construction the ExA is content that the Applicant has adequately confirmed that Commitments C-130, C-131, C-132, C-179, C-180 and C-133 in the Commitments Register [REP6-227] provide provisions to ensure that soil stockpiles would not impact the existing natural surface water flow paths.

- 3.19.129. Considering the Sequential Test in relation to the permanent above ground infrastructure, the ExA acknowledges that the Applicant considered many aspects when considering the location of the permanent substations, and one of those was a consideration of flood risk. The ExA notes that the choice of substation location between the Wineham Lane North site and the Oakendene site, that Wineham Lane North had a marginally lower risk of surface water flooding than the Oakendene site but was rejected for technical feasibility and engineering constraints [REP4-039 paragraph 9.1.36]. The ExA considers that as both sites are located in Flood Zone 1 and due to the very marginal difference in surface water flood risk which the Applicant has confirmed could be managed sustainably on site, that an adequate sequential approach can be considered to have been undertaken by the Applicant in relation to the choice of the permanent above ground infrastructure substation location.

- 3.19.130. Overall, in relation to the whole of the Proposed Development, given the evidence provided by the Applicant and the confirmation from the West Sussex CC as the LLFA, Horsham DC and the EA that they all are satisfied with the Applicant's FRA [REP4-039], that the ExA is content that the Applicant has adopted a sequential approach to the consideration of flood risk. The ExA is satisfied each aspect of the location of the new infrastructure, landfall, cable route and permanent above ground infrastructure has been directed to the lowest flood risk areas from all sources as far as possible, given the alternatives and technical constraints. The ExA therefore considers that the Sequential Test has been satisfied.
- 3.19.131. The ExA finds there have been no objections raised to the Applicant's assessment of the Exception Test from the EA or the LPAs. Considering the first part of the Exception Test, the ExA recognises the wider sustainability benefits that would arise from the Proposed Development presented by the Applicant in section 9.2 of the FRA [REP4-039].
- 3.19.132. In terms of mitigation measures for the second part of the Exception Test, the ExA considers that the OODP [REP5-062] has been adequately secured through Requirement 17 of the Applicant's draft DCO [REP6-007] and an emergency response plan for flood events is contained in the Outline CoCP [REP6-224] which covers an emergency response plan (at 5j). Furthermore, the ExA considers that the Applicant has adequately demonstrated through the FRA [REP4-039] that the Proposed Development would be safe from flooding and would not increase the risk of flooding elsewhere. Taking all of this into account the ExA is content that the Exception Test has been satisfied.
- 3.19.133. The ExA is content that Commitments C-9, C-19 and C-28 in the Commitments Register [REP6-227] require the onshore cable route to be reinstated and, therefore, impacts on surface water run-off, drainage and flooding would be temporary in nature. C-28 in particular, would require particular care to be taken to ensure that the existing land drainage regime is not compromised as a result of construction. A specialist drainage contractor / consultant would be engaged prior to construction to develop the pre and post-construction drainage plan on agricultural land. The ExA is satisfied that the effects on drainage and flooding at College Wood Farm would be adequately addressed through the control measures that are secured in the draft DCO [REP6-007].
- 3.19.134. Considering the response from West Sussex CC [REP3-073] the ExA concludes that the Proposed Development adheres with the Local Flood Risk Management Strategy.
- 3.19.135. The ExA is content that the Construction Phase Drainage Plan secured via Requirement 22 of the draft DCO [REP6-007] reinforced by embedded environmental measures in the Commitments Register [REP6-227] provides adequate control measures to address any effects on drainage from the housing development to the west of Church Lane.
- 3.19.136. The ExA is satisfied that the effects from potential frac out or HDD failure are adequately addressed through the emergency response plan, pollution prevention plan and pollution incident response plan secured in Requirement 22 of the draft DCO [REP6-007].
- 3.19.137. The ExA is also satisfied that that Requirement 22 within the draft DCO [REP6-007] provides adequate control measures such that the EA must be consulted on the

CoCP prior to work on land commencing. The ExA is content that potential effects on water quality of the River Adur is adequately addressed through control measures in Requirement 22 (4) of the draft DCO which stipulates the CoCP must accord with the OCoCP and include, as appropriate to the relevant stage pollution prevention plan and pollution incident response plan.

- 3.19.138. The ExA notes that the EA confirmed it is satisfied with the Applicant's suggested approach to securing management of the risk of contaminated land hotspots to controlled waters in the draft DCO [REP6-007] in response to WQ TE 1.34 [REP3-148]. The ExA acknowledges that Commitment C-6 in the Commitments Register [REP6-227], commits the developer to avoid sensitive sites including historical and authorised landfills and other known areas of potential contamination where practical.
- 3.19.139. The ExA is satisfied that any effects on controlled waters would be adequately addressed through measures in the OCoCP [REP6-224] secured via Requirement 22 of the draft DCO [REP6-007], which outlines the commitment to further contamination assessment of historic landfills post-consent, and the commitment that appropriate remediation would be implemented where required, in line with the EA's guidance on land contamination and risk management, secured through Requirement 25 of the draft DCO. The ExA is also satisfied that the OCoCP [REP6-224] addresses the commitment to adequately decommission and backfill any borehole lost as part of the development such that it would not represent a rapid pathway to underlying aquifers, in line with EA guidance.
- 3.19.140. The ExA notes confirmation by the EA that it was satisfied with the WFD assessment provided and is therefore satisfied the Proposed Development complies with the WFD.
- 3.19.141. Considering the Applicant's responses [REP3-051] and EA's responses [REP3-148] to Arun DC's concerns on this matter [REP1-039 point 4.14], the ExA is content that potential effects on private water supplies would be adequately addressed through control measures in the OCoCP [PEPD-033] updated at Deadline 6 [REP6-224] secured via Requirement 22 of the draft DCO [REP6-007] and the requirement for a suitable water quality monitoring regime to be agreed with Arun DC post-consent.

Conclusions

- 3.19.142. The ExA examined all the Applicant's submitted assessments and considered all the issues raised during the Examination related to the water environment.
- 3.19.143. The ExA concurs with ES Chapter 26 [REP6-155] that the significance of effect from the Proposed Development on the water environment would be Negligible (Not Significant).
- 3.19.144. The ExA is satisfied that the overall effects of the Proposed Development on the water environment including flood risk, hydrology, hydrogeology, water resources and water quality would not give rise to any significant effects. The ExA concludes that the CoCP, secured by Requirement 22 of the draft DCO [REP6-224] being in accordance with the OCoCP, would contain adequate embedded measures in relation to flood risk, drainage management, protection of water resources and water quality and emergency response, and that Requirement 25 of the draft DCO [REP6-007] would adequately secure measures to deal with any contamination of groundwater or controlled waters that might occur. The final CoCP would need to be

approved by the relevant planning authorities following consultation with the EA, the SNCB and the LLFA. There were no water related matters outstanding in the final SoCGs with any of the relevant planning authorities, the SNCB or the EA.

- 3.19.145. The ExA is satisfied that the Sequential Test and the Exception Test have been satisfied, regard has been given to the application of the climate change allowances for peak river flow and peak rainfall and the Proposed Development would ensure compliance with the WFD.
- 3.19.146. The ExA therefore considers that the policy tests of NPS EN-1, NPS EN-3 and NPS EN-5 2011 have been met in this regard and the Proposed Development would accord with the NPPF, and relevant flooding and water policies set out in the Arun Local Plan, Horsham District Planning Framework, Mid Sussex District Plan, South Downs Local Plan, West Sussex LLFA Culvert Policy and the Local Flood Risk Management Strategy. The ExA is further satisfied that the Proposed Development accords with other national and local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.19.147. The ExA is satisfied the Recommended DCO would adequately mitigate against any negative effects of the Proposed Development in respect to water. The ExA considers there are no residual effects or issues which affect the planning balance.
- 3.19.148. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to the water environment and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.20. POPULATION AND HUMAN HEALTH

The Applicant's Case

- 3.20.1. ES Chapter 28 [REP6-159] provides an assessment of the LSE of the Proposed Development with respect to population and human health. The assessment should be read in conjunction with:

- Volume 2, Chapter 4: The Proposed Development [REP6-171].

Parts of the following chapters and appendices are also relevant:

- Volume 2, Chapter 15: Seascape, landscape and visual impact assessment [REP6-131].
 - Volume 2, Chapter 17; Socio-economics [REP6-135].
 - Volume 2, Chapter 18: Landscape and visual impact [REP6-137].
 - Volume 2, Chapter 19: Air quality [REP6-139].
 - Volume 2, Chapter 21: Noise and vibration [REP6-145].
 - Volume 2, Chapter 23: Transport [REP6-149].
 - Volume 2, Chapter 24: Ground conditions [REP6-151].
 - Volume 4, Appendix 28.1: Human health baseline [APP-219].
 - Volume 4, Appendix 28.2: EMF health evidence base [APP-220].
 - Volume 4, Appendix 28.3: Equalities Impact Assessment [APP-221].

- 3.20.2. The effect of the Proposed Development on population and human health was assessed for the entire lifetime of the onshore aspects of the Proposed Development including the construction, operational and maintenance, and

decommissioning phases. The assessment used a parameter-based design envelope approach meaning that the assessment considered a MDS the advantage of which the Applicant considers allows the flexibility to make improvements in the future in ways that cannot be predicted at the time of submission of the DCO application.

3.20.3. The following activities and impacts were scoped out of the assessment:

- Health effects from changes in local air quality (Operation and maintenance) (there would be no emissions associated with the onshore cable or onshore substation and the amount of road traffic for servicing the Proposed Development would also be very low).
- Health effects from changes in transport nature and flow rate (Operation and maintenance) (operational traffic is anticipated to be negligible and infrequent).
- Health effects from changes to socioeconomic factors - employment and associated income (Operation and maintenance) (socioeconomic benefits of employment would be limited therefore associated human health benefits would also be limited).
- Health effects from changes in access to opportunities for recreation and physical activity (Operation and maintenance) (no potential for any associated impacts on access to opportunities for physical activity and recreation through the use of PRoW and open space).
- Health effects from impacts to water quality and resources (all phases) (compliance with the standards within the WFD, which are inherently protective of the environment and human health).

3.20.4. The health sensitivity methodology criteria shown in Table 28-14 [REP6-159] was used inform the population-level assessment of significance. This is based on the Institute of Environmental Management and Assessment (IEMA) Guide to *"Determining Significance for Human health in EIA"* (IEMA 2022).

3.20.5. An extensive amount of baseline data was collected to interpret local health circumstance. This is contained Volume 4, Appendix 28.1: Human health baseline [APP-219]. Overall, it was concluded that local health circumstance in the Study Area is generally good and as a result the existing burden of poor health is low.

3.20.6. In addition, an analysis of the Ministry of Housing, Communities and Local Government index of multiple deprivation and health deprivation and disability domain (2019) concluded that very few receptors are in areas of high deprivation. As a result, it was not considered necessary to analyse specific sub-populations as part of the overarching assessment of population health.

3.20.7. The health magnitude methodology criteria used to inform the assessment of significance is shown in Table 28-16 [REP6-159]. This was based on IEMA (2022).

3.20.8. The significance of an effect was determined based on the sensitivity/value of a receptor and the magnitude of an impact as shown in Table 28-17 [REP6-159] in accordance with IEMA (2022) with Table 28-18 [REP6-159] providing a description of each significance level. Where a range of significance levels is indicated in the table, the final assessment for each effect was based upon professional judgement.

3.20.9. The population and human health assessment for the construction phase comprised an analysis of potential effects associated with changes in air quality, noise

exposure, transport nature and flow rate, visual amenity, land contamination, access to opportunities for physical activity, and socioeconomic factors.

- 3.20.10. The decommissioning phase assessment assessed the same health determinants except access to opportunities for physical activity due to the comparative lack of disruption along the onshore cable route corridor.
- 3.20.11. The assessment of health effects in the operation and maintenance phase comprised effects from changes in noise exposure, exposure to EMF and visual amenity.
- 3.20.12. In all cases, the evaluation of receptor sensitivity, impact magnitude and significance of effect was informed by professional judgement and is underpinned by narrative to explain the conclusions reached.
- 3.20.13. For human health, a ZOI approach was adopted for the CEA to ensure direct and indirect cumulative effects were appropriately identified and assessed. The human health ZOI differed for each health determinant and was consistent with the ZOI used for each inter-related technical cumulative assessment that was used to inform the human health cumulative assessment.
- 3.20.14. Developments considered as part of the of the human health CEA are listed in Tables 28-23 to 28-27 [REP6-159] for each health determinant assessed and the overarching CEA for human health is contained in Table 28-28 [REP6-159].
- 3.20.15. No significant cumulative effects were identified in relation to the Proposed Development on population and human health from construction, operation and maintenance, and decommissioning activities.
- 3.20.16. There are no onshore populations beyond the jurisdiction of the UK who would be impacted by the Proposed Development. As such, no significant transboundary effects were identified in relation to the Proposed Development on human health receptors from construction, operation and maintenance, and decommissioning activities.
- 3.20.17. An inter-related effects assessment considered LSE from multiple impacts and activities from the construction, operation and maintenance and decommissioning phases of the Proposed Development on the same receptor, or group of receptors Chapter 30: Inter-related effects, Volume 2 of the ES [REP6-165]. The assessment concluded that following the implementation of the embedded environmental measures, there would be no significant inter-related effects on receptors considered in the ES. It was not anticipated that any further receptor-led inter-related effects would occur that are of any greater significance compared to the impacts considered already within the ES chapters, and it was not anticipated that project-lifetime inter-related effects of greater significance than those considered in isolation for each individual phase.
- 3.20.18. Table 28-29 of Volume 2, Chapter 28: Population and Human Health, of the ES [REP6-159] provides a summary of the assessment of significant effects, any relevant embedded environmental measures and the residual effects on noise and vibration receptors. Table 28-13 of the same document provides a description of the embedded environmental measures and sets out how they would be secured.

- 3.20.19. The ES [REP6-159] concluded that the effects of the Proposed Development in relation to population and human health after considering embedded environmental mitigation measures are Negligible (Not Significant).

Examination Issues

- 3.20.20. The main issues in the Examination were:

- Electric and magnetic fields.
- Health impacts on divers.

Electric and magnetic fields

- 3.20.21. Ms Deborah Baxter [RR-038], Mr Christopher Irving [RR-065], Ms Eleanor Owens, Mr Richard Morris [RR-313], Mr Tim Facer [RR-398], and Ms Valerie Swaffer all raised concerns regarding the potential health effects of heat or electric and magnetic fields (EMF) from buried high voltage cables.
- 3.20.22. In response to the RRs [REP1-017] the Applicant noted that Volume 2, Chapter 28: Population and Human Health of the ES [APP-069] and Volume 4, Appendix 28.2: Electro Magnetic Field Health Evidence Base [APP-220] addresses the potential health effects of EMF. The Applicant's assessment concluded: *"that the magnitude of impact on human health from potential exposure EMF for both the 275 kilovolt (kV) cable system along the onshore cable route from landfall (Climping) to the new onshore substation (Oakendene) and 400kV cable system between the new onshore substation (Oakendene) and the National Grid connection point (National Grid Boney substation) is negligible, which is not significant in EIA terms. Therefore, the Rampion 2 electricity transmission infrastructure is well below the public health exposure guidelines and can be considered safe for human receptors"*.
- 3.20.23. None of the local authorities identified EMF generated by the buried cables as a potential health issue in their PADS submissions. Only West Sussex CC referred to it in its LIR [REP1-054] evaluating its potential impact as neutral and noting that it expected the Applicant to maintain the EMF levels below the recommendations for both transient and residential exposure as appropriate, as embedded environmental measures within the design and outlined in Table 28-13 of Volume 2, Chapter 28: Population and Human Health of the ES [APP-069].

Health impacts on divers

- 3.20.24. There were comments regarding the impact to divers at the RR stage. There was a RR received from the Worthing British Sub Aqua Club (BSAC), which is a dive club, with their comments also representing the Guildford BSAC [RR-423]. The Worthing BSAC stated it had already experienced disruption with the Rampion 1 OWF. It also stated that either side of the proposed export cable are popular diving areas, often linked with wreck sites. Worthing BSAC set out that there were three main areas of concern that would significantly affect the members of the local and national diving community, all during the construction phase. These were exclusion zones during construction, SSC, and underwater noise.
- 3.20.25. Of prime concern to the Worthing BSAC is the construction exclusion zones, which it explains would likely be considerable for the on-going viability of the club and would be unable to offer its members any wreck diving in the vicinity of its established base. Worthing BSAC stated that it is looking to relocate to the river

Arun, and it submits that a contribution towards funding these measures would not be unreasonable in the circumstances [RR-423].

- 3.20.26. In response to the RRs received on this matter, the Applicant stated that Chapter 7: Other Marine Users of the ES [APP-048, updated with REP6-177] addresses the potential effects of the Proposed Development on recreational boating, sailing, and fishing. It also includes an assessment of effects on diving and water sports (including surfing). The assessments conclude the likely effects from the Proposed Development on these activities is not significant in EIA terms.
- 3.20.27. The ES [REP6-177] acknowledges that owing to the region's popularity with diving, there are a number of important dive centres and schools within the vicinity of the study area including British Sub Aqua clubs. On the matter of exclusion zones, the ES states that whilst such dive sites are within 500m of the Array boundary and could therefore be affected by safety zones, this would be intermittent and short-term, with the safety zones impacting access only during active construction of the structure. The ES assesses there to be minor significant residual effect on diving as a result of the necessary safety zones.
- 3.20.28. To address the issue of SSC and divers, the ES sets out that the construction works are widely publicised. Also, the ES states that whilst the impact of SSC and deposition from construction activities is expected to cover a number of dive sites within the sediment plume area, this would be short-term, intermittent and of relatively localised extent (mostly within the tidal excursion) and temporary. The ES concludes that there would be impacts of minor significance to divers on this issue [REP6-177].
- 3.20.29. For underwater noise, the ES states that all piling activities would also commence with a soft-start process, which could avoid shock or startle effects. There would be the imposition of a safety exclusion zone around all piling operations within which no-one is permitted to enter the water. Finally, there would be a comprehensive awareness and communications strategy (a Diver Communication Plan in accordance with the Outline Diver Communication Plan) [APP-242]. The ES concludes an impact of minor significance to divers as a result of underwater noise from the Proposed Development [REP6-177].
- 3.20.30. The Applicant provided further information at Deadline 1 [REP1-033]. It stated that in relation to divers, there will be an exclusion area for the protection of health of 2 km. The Outline Diver Communication Plan [APP-242] confirms that the Applicant would issue notices to mariners and hold specific consultations to ensure everybody is aware at least five days in advance of piling activities. Information would be communicated to dive clubs. The Applicant noted that at 2 km, there would not be an adverse effect on hearing, although the sound could be surprising for divers. However, according to the Applicant, many in the local area are snorkellers rather than divers and so would be protected from the noise. Further, the Applicant has made a commitment to use at least one noise abatement technique (the DBBC), which is secured by the Sensitive Features Mitigation Plan [In Principle version – REP5-082] in condition 11(1)(k) of DML in the Recommended DCO.
- 3.20.31. The Applicant also noted that there would be a policed exclusion area of 2km around the piling site but beyond that the Applicant would be notifying divers, and it would be up to an individual as to whether they wish to dive. According to the Applicant, the general area benefits from many dive sites and so there are numerous alternative sites available [REP1-033].

- 3.20.32. An update on those SoCGs considered of relevance to Population and Human Health is provided below (outstanding matters relating to Traffic and Access, Noise and Vibration and Air Quality and human health are addressed in corresponding Section of this Recommendation).
- 3.20.33. As detailed in their respective SoCG, all matters in respect of population and human health had been recorded as agreed between the Applicant and West Sussex CC [REP6-255], Horsham DC [REP6-245], Mid Sussex DC [REP6-092], Arun DC [RE5-090] and the SDNPA [REP6-254].

ExA's Findings

- 3.20.34. The ExA has considered the effects of the Proposed Development on population and human health in the context of the policy framework set by the Overarching National Policy Statement for Energy (NPS EN-1 2011 and 2024), the National Policy Statement for Renewable Energy Infrastructure (NPS EN-3 2011 and 2024) and the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5 2011 and 2024).
- 3.20.35. The ExA findings on the potential impacts of the Proposed Development on population and human health in relation to traffic, air quality and noise and vibration are set out in Sections 3.15, 3.16 and 3.21 of this Recommendation.
- 3.20.36. Section 4.10 of NPS EN-1 2011 covers pollution control and other environmental regulatory regimes. Paragraph 4.10.2 of NPS EN-1 2011 states that the planning system plays a key role in protecting and improving the natural environment, public health and safety, and amenity.
- 3.20.37. Section 4.13 of NPS EN-1 2011 covers health and paragraph 4.13.1 of NPS EN-1 2011 explains that energy production has the potential to impact on the health and well-being of the population.
- 3.20.38. Paragraph 4.13.2 of NPS EN-1 2011 states that where the proposed project has an effect on human beings, the ES should assess these effects for each element of the project, identifying any adverse health impacts, and identifying measures to avoid, reduce or compensate for these impacts as appropriate. The impacts of more than one development may affect people simultaneously, so the applicant and the Secretary of State should consider the cumulative impact on health.
- 3.20.39. Paragraph 4.13.3 of NPS EN-1 2011 explains that the direct impacts on health may include increased traffic, air or water pollution, dust, odour, hazardous waste and substances, noise, exposure to radiation, and increases in pests. In addition, new energy infrastructure may also affect the composition, size and proximity of the local population, and in doing so have indirect health impacts, for example if it in some way affects access to key public services, transport or the use of open space for recreation and physical activity (paragraph 4.13.4 of NPS EN-1 2011).
- 3.20.40. Paragraph 4.13.5 of NPS EN-1 2011 states that generally, those aspects of energy infrastructure which are most likely to have significantly detrimental impact on health are subject to separate regulation (for example for air pollution) which would constitute effective mitigation of them, so that it is unlikely that health concerns would either constitute a reason to refused consents or require mitigation under the PA2008.

- 3.20.41. Sections 5.2, 5.10, 5.11 and 5.15 of NPS EN-1 2011 relate to the potential impact on health from the Proposed Development's impact on air quality and emissions, land use, noise and vibration and water quality and resources.
- 3.20.42. With reference to artificial light, paragraph 5.6.1 of NPS EN-1 2011 says that infrastructure development has the potential for the release of a range of emissions including artificial light, and paragraph 5.6.4 says that the applicant should assess the potential for artificial light to have a detrimental impact on amenity as part of the ES.
- 3.20.43. The assessment should include effects on premises or locations, and the proposed mitigation (NPS EN-1 2011 paragraph 5.6.5). Paragraph 5.6.7 of NPS EN-1 2011 says that the decision maker should be satisfied that an assessment of the potential for artificial light emissions to have a detrimental impact on amenity has been carried out and that such impacts have been minimised. The decision maker should also consider whether any additional mitigation measures are needed and whether there is a need for a construction management plan (NPS EN-1 2011 paragraph 5.6.10). Paragraph 5.6.11 of NPS EN-1 2011 gives examples of engineering, layout and administrative mitigation.
- 3.20.44. In respect of common law nuisance and statutory nuisance, NPS EN-1 2011 paragraph 5.6.1 says that a range of emissions has the potential to cause a common law nuisance or statutory nuisance under Part III Environmental Protection Act 1990. NPS EN-1 2011 paragraph 4.14.1 says that s158 of the PA2008 confers statutory authority, but only for the purpose of providing a defence in any civil or criminal proceedings for nuisance.
- 3.20.45. This defence does not extinguish the local authority's duties to investigate complaints of statutory nuisance and serve abatement notices, nor is it intended to extend to proceedings where the matter is prejudicial to health. In view of the availability of this defence, it is important that the potential for impacts is considered (NPS EN-1 2011 paragraph 5.6.2) and that impacts are kept to a minimum and at a level that is acceptable (NPS EN-1 2011 paragraph 5.6.3).
- 3.20.46. NPS EN-1 2011 says that, as well as including relevant requirements in the order (paragraph 4.14.2 NPS EN-1 2011), the decision maker can also disapply s158 PA2008 in whole or in part in any particular case, having regard to whether any particular nuisance is an inevitable consequence of the development (paragraph 4.14.3 NPS EN-1 2011). Paragraph 5.6.8 of NPS EN-1 2011 says that if the decision maker cannot conclude that there is justification for all the authorised project to be covered by the s158 PA2008 defence, then the defence should be disapplied in whole or in part through a provision in the order.
- 3.20.47. Section 2.10 of NPS EN-5 2011 details the assessment and technology-specific information for electric and magnetic fields (EMFs) with paragraph 2.10.2 of NPS EN-5 2011 stating that EMFs can have both direct and indirect effects on human health. The direct effects occur in terms of impacts on the central nervous system resulting in its normal functioning being affected. Indirect effects occur through electric charges building up on the surface of the body producing a micro shock on contact with a grounded object, or vice versa, which, depending on the field strength and other exposure factors, can range from barely perceptible to being an annoyance or even painful.

- 3.20.48. Paragraph 2.10.3 of NPS EN-5 2011 states that to prevent these known effects, the International Commission on Non-Ionizing Radiation Protection (ICNIRP) developed health protection guidelines in 1998 for both public and occupational exposure. These guidelines [EMF exposure guidelines published by ICNIRP in 1998] also form the basis of a 1999 EU Recommendation on public exposure and a Directive on occupational exposure. Resulting from these recommendations, Government policy is that exposure of the public should comply with the ICNIRP (1998) guidelines in terms of the EU Recommendation (paragraph 2.10.5 of NPS EN-5 2011)
- 3.20.49. Applications should show evidence of this compliance by following *“Power Lines: Demonstrating compliance with EMF public exposure guidelines – a voluntary Code of Practice”* (paragraph 2.10.9 of NPS EN-5 2011).
- 3.20.50. In addition, paragraph 4.3.6 of NPS EN-1 2024 states:
- “Opportunities should be taken to mitigate indirect impacts, by promoting local improvements to encourage health and wellbeing, this includes potential impacts on vulnerable groups within society, i.e. those groups which may be differentially impacted by a development compared to wider society as a whole.”*
- 3.20.51. Regarding EMF, the ExA notes that the 1998 ICNIRP guidelines and electricity industry Code of Practice informed the Applicant’s assessment of human health effects associated with EMFs in accordance with NPS EN-1 2011. The ExA also notes that West Sussex evaluated the potential impact EMF on human health as neutral in its LIR [REP1-054] and expected the Applicant to maintain the EMF levels below the recommendations for both transient and residential exposure as appropriate, as embedded environmental measures within the design and outlined in Table 28-13 of Volume 2, Chapter 28: Population and Human Health of the ES [APP-069]. In addition, this was not an issue raised by other local authorities in the PADs or LIRs. The ExA is therefore satisfied that the Applicant has addressed this issue.
- 3.20.52. The ExA acknowledge that this offshore area off the coast of Sussex is popular with divers. The construction works in particular would result in restrictions to divers, with the use of exclusion zones which would be necessary for safety reasons. The ExA is satisfied with the 2km exclusion area distance and has no substantive reason to conclude otherwise. The piling would likely be audible to divers outside of this perimeter, but the evidence provided by the Applicant indicates it would not cause health or hearing damage, for example.
- 3.20.53. The restrictions would result in some diving sites being not available, but this would be a temporary measure while the structure is being built. It is likely that there would be alternative dive sites outside of any restricted areas. Once the infrastructure is built then the exclusion zone could be lifted, and diving resumed. ExA do acknowledge that this would have some impact to the diving clubs of the area, nonetheless.
- 3.20.54. In terms of SSC, there is likely to be some smothering of dive sites, but this should only be a temporary impact for the dive sites closest to the piling location or cable burial routes. Suspended sediment obscuring divers’ visibility should also be short term, with notice of construction works relayed by the Applicant to divers’ clubs etc, so that divers can avoid potentially affected areas. ExA concludes that this would not be a long-term issue of anything more than minor significance.

- 3.20.55. Overall, with the mitigation in place, such as the noise abatement measures [C-265), the commitment to the Diver Communication Plan (C-101), within the Commitment Register [REP6-227], among other forms of mitigation, the ExA broadly agrees with the ES [REP6-177] that the impacts to divers and diving clubs would be minor in its adverse impact. The Proposed Development, on this matter of impact to divers, is in accordance with NPS EN-3, including paragraph 2.6.184 which requires that *“the [Secretary of State] should be satisfied that the site selection and site design of the proposed offshore wind farm has been made with a view to avoiding or minimising disruption or economic loss or any adverse effect on safety to other offshore industries. The [Secretary of State] should not consent applications which pose unacceptable risks to safety after mitigation measures have been considered”*.
- 3.20.56. Based on the ExA conclusions as set out above, there is no necessity for the Applicant to compensate individual diving clubs or individuals.
- 3.20.57. The ExA finds that the Proposed Development would be in accordance with the remaining population and human health requirements of NPS EN-1 2011 and NPS EN-5 2011 as:
- Volume 2, Chapter 28: Population and Human Health of the ES [REP6-159] was informed by a range of inter-related technical disciplines which constitute environmental, social and/or economic determinants of health and wellbeing.
 - While access to energy is beneficial to society and human health, the Applicant’s assessments provided in Sections 28.9, 28.10 and 28.11 of the ES [REP6-159] consider both beneficial and adverse effects at the project level.
 - Consistent with the IEMA Guide to *“Determining Significance for Human health in EIA”* (paragraphs 28.2.7 to 28.2.35), a population health approach has been taken, whereby health outcomes of a group of individuals, including the distribution of such outcomes within the group has been assessed in the ES [REP6-159];
 - Both direct and indirect impacts on health have been considered when determining the scope of the human health assessment.
 - Potential impacts on human health from water quality and resources were considered but scoped out of the human health assessment.
 - The 1998 ICNIRP guidelines and electricity industry Code of Practice informed the assessment of human health effects associated with EMFs.
 - The Applicant’s defence to proceedings in respect to statutory nuisance is set out in Article 8 of the draft DCO and the control of activities which may give rise to a claim of nuisance is in the Requirements of the Recommended DCO.
- 3.20.58. Further the ExA finds that the Proposed Development would be in accordance with the requirements of NPS EN-1 2023 because the Applicant has provided an Equalities Impact Assessment in Volume4, Appendix 28.3: Equalities Impact Assessment of the ES [APP-221] which assessed in detail all potential equality effects (including on health and wellbeing) associated with the Proposed Development.
- 3.20.59. The ExA is satisfied that the Applicant has adequately addressed all other issues related to population and human health raised at all the Examination deadlines.

ExA Conclusions

- 3.20.60. The ExA conclusions on the potential impacts of the Proposed Development on population and human health in relation to traffic, air quality and noise and vibration are set out in Sections 3.15, 3.16 and 3.21 of this Recommendation.
- 3.20.61. The ExA concurs with ES Chapter 28 [REP6-159] that the significance of effect from the Proposed Development on population and human health would be Negligible to Minor Adverse (Not Significant), caused by the construction activities.
- 3.20.62. 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 Requirements 22 (CoCP), 23 (Onshore construction method statement), 24 (Construction Traffic Management Plan), 27 (Operation phase maintenance), 29 (Control of noise during the operational phase) and 33 (Skills and employment strategy) of the Recommended DCO.
- 3.20.63. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.20.64. The ExA attaches a Little Negative weight to this effect on population and human health matters in the planning balance.
- 3.20.65. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to population and human health and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.21. NOISE AND VIBRATION

ES Summary

- 3.21.1. ES Chapter 21 [REP6-145] provides an assessment of the LSE of the Proposed Development with respect to noise and vibration at onshore receptors. The assessment is supported by Volume 3, Chapter 21: Noise and Vibration – Figures [PEPD-022] and should be read in conjunction with:
- Volume 2, Chapter 4: The Proposed Development [REP6-171].
- Parts of the following chapters are also relevant:
- Volume 2, Chapter 18: Landscape and visual impact [REP6-137].
 - Volume 2, Chapter 22: Terrestrial ecology and nature conservation [REP6-147].
 - Volume 2, Chapter 23: Transport [REP6-149].
 - Volume 2, Chapter 25: Historic environment [REP6-153].
- 3.21.2. The noise and vibration assessment compared either current noise levels or acceptable threshold values at identified receptors with those noise levels that are predicted should the Proposed Development proceed. The results of the comparison were then assessed against a suite of criteria depending on the noise

source. In addition, absolute levels of noise from the Proposed Development were assessed in relation to adverse effect levels as described within the Noise Policy Statement for England (NPSE).

- 3.21.3. The following activities or impacts were scoped out of the assessment:
- Increases in noise from site traffic for substation and wind farm maintenance (operational road traffic would be minimal and would only have a negligible effect on existing road traffic flows, leading to no LSE).
 - Noise effects as a result of the offshore substation (noise would not be audible as a result of the sound attenuation from the large distance between the offshore substations and onshore receptors, leading to no LSE).
 - Vibration effects from the operation of the onshore and offshore substations and offshore WTGs (All operational components of the Proposed Development would be at a sufficient distance that resulting vibration at sensitive receptors would not be perceptible, leading to no LSE).
- 3.21.4. Construction phase noise was predicted utilising SoundPLAN computer noise modelling software (version 8.2) incorporating BS 5228-1:2009 + A1:2014 Code of practice for noise and vibration control on construction and open sites. Part 1: Noise (BSI, 2014a) calculation methodology based on anticipated construction plant and methodologies.
- 3.21.5. At this stage prior to detailed construction design, predictions were based on area wide noise sources encompassing all plant locations to be used within the boundaries of each site, rather than specific locations for individual plant items. To account for a worst-case scenario the total sound power level from a site was calculated from all plant working at the same time (but with level factored for on-times). The predicted noise at receptor locations was based on this total sound coming from the closest point within the boundary to each receptor.
- 3.21.6. Where the boundary of sites is close to receptors (<50 m), this approach gives an unrealistically high predicted noise level when in reality this would not occur. Where was required to give a moderated picture of the noise from site work, an averaged approach to the construction noise was included, taking the total sound power level across the area source representing the works boundary. This latter approach gave an estimation of how the site noise could be experienced over a longer period of time. The exception to this approach was the onshore cable route trenching, which would result in a sufficiently temporary noise disturbance that it would not result in exceedances of the temporal criteria, outlined in Table 21-23 [REP6-145].
- 3.21.7. The noise from offshore piling at onshore receptors was predicted using Danish Statutory Order no. 1284 (2011), which is currently the most reliable prediction methodology for noise over water. Calculations were based on two piles a day at the closest boundary of the wind farm area to the shoreline.
- 3.21.8. Construction traffic noise predictions were undertaken using a spreadsheet incorporating Calculation of Road Traffic Noise (CRTN) (Department of Transport Welsh Office, 1988). This was undertaken for a 'with' and 'without' (for the time of construction) construction traffic scenario which was then compared to provide the change in traffic noise as a result of the works. The difference between the 'with' and 'without' scenarios was assessed using short-term criteria within the DMRB (Standards for Highways, 2020) updated noise assessment section (Volume 11, Section 3, Part 7, LA111). As it is only the difference in traffic noise that is being

assessed it was possible to calculate the Basic Noise Level (as per CRTN method) at 10m for each scenario and use this to represent changes at all receptor locations for a particular road link.

- 3.21.9. The traffic flows used in the assessment are shown in Table 21-21 [REP6-145]. The traffic flows represent a higher than maximum worst-case as the assessment assumed traffic using accesses are routed in each direction (when they would be spread over multiple roads) and traffic from accesses occurs at the same time (when there would either be a time separation between access use or the worst-case flows would not happen at the same time). In reality, the ES states that traffic flows on road links would be substantially lower than shown. The purpose of the traffic noise assessment was to act as an assessment envelope to show whether there would be any chance of a significant impact if any of the varied more realistic flow options were adopted.
- 3.21.10. Construction traffic on access routes was assessed in the ES using the haul route calculation method and criteria within BS 5228-1 (BSI, 2014a). The difference from traffic on established roads is that haul roads cannot be compared to existing traffic levels (i.e. either the haul roads do not exist in the baseline scenario, or the traffic is such a low flow that this cannot be predicted within CRTN).
- 3.21.11. Due to the uncertainties regarding ground conditions and final plant equipment during the construction phase, the assessment of vibration from likely sources, in the ES was undertaken qualitatively, but with consideration of empirical levels provided within BS 5228-2:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites Part 2 Vibration (BSI, 2014b). BS 5228-2 also provides the criteria which informed the identification of magnitude of impact.
- 3.21.12. The ES explains that traffic induced vibration effects are caused in two main ways: airborne vibration via the excitation of resonant frequencies in the shell of the building from the low frequency sound from large vehicles; and ground borne vibration from the tyre / road interface which is pronounced due to irregularities in the road surface.
- 3.21.13. Airborne vibration is sometimes detectable in buildings fronting high trafficked roads. The nuisance caused by vibration would be lower than that caused by noise and therefore any vibration effects would be screened by the effect of noise (Watts, 1990). It was therefore assumed in the assessment that if there are no significant noise effects would be no significant airborne vibration effects.
- 3.21.14. The ES considered that ground borne vibration effects experienced in buildings were likely to be negligible at locations where the road surface was free of irregularities, such as cracks, bumps and potholes. It was however not possible to predict in what state a road would be by the time of the construction. A review of all construction traffic road links was therefore undertaken, and those links identified where there is the potential for significant effects. Predictions were then made using formula within 'Research Report 246: Traffic Induced Vibrations in Buildings' (Watts, 1990) to identify properties which could experience significant effects if there are irregularities in the road.
- 3.21.15. An assessment of operational noise generated by the onshore substation was undertaken in the ES using prediction methodology within International Standards Organisation, (1996). ISO 9613-2:1996 Acoustics – Attenuation of sound during propagation outdoors. Part 2: General method of calculation and assessed in

accordance with BS 4142:2014 + A1:2019 Methods for rating and assessing industrial and commercial sound (BSI, 2019).

- 3.21.16. To predict the operational noise from the onshore substation, SoundPLAN 3D noise modelling software was used. The noise model incorporated proposed buildings and fixed plant, residential dwellings and other buildings in the Study Area, and topographical data.
- 3.21.17. A tonal penalty from the onshore substation low frequency ‘hum’ was applied to form a rating correction. No other corrections have been applied (i.e. impulsivity, intermittency or other sound characteristics).
- 3.21.18. In accordance with the Sussex Noise Guidance for developers), the rating level of an industrial or commercial sound source should, where practicable, achieve a level no greater than the representative background sound level, when measured in accordance with BS 4142 (BSI, 2019). However, it is also necessary to consider the context; of relevance to this assessment are the absolute sound levels. Regarding absolute sound levels, BS 4142 (BSI, 2019) states that:
- “Where background sound levels and rating levels are low, absolute levels might be as, or more, relevant than the margin by which the rating level exceeds the background. This is especially true at night.”*
- 3.21.19. BS 4142 (BSI, 2019) provides no guidance about what background and rating levels are considered low; however, the 1997 version of the standard stated that background sound levels below around 30dB LA90, and rating levels below around 35dB LAr,Tr, were considered very low and therefore outside the scope of the assessment method. The Association of Noise Consultants (ANC) produced guidance on the application of BS 4142 (ANC, 2020) which states that:
- “Similar values [i.e. background sound levels below around 30dB LA90, and rating levels below around 35dB LAr,Tr] would not be unreasonable in the context of BS 4142, but that the assessor should make a judgement and justify it where appropriate.”*
- 3.21.20. In addition, the World Health Organisation (WHO) Night Noise Guidance for Europe (NNG) (2009) found that below the level of 30dB L night, outside there are no observed effects on sleep.
- 3.21.21. The ES notes that at the request of Mid Sussex DC, the Applicant also carried out an indicative noise break-in assessment to provide reassurance that low frequency would not be an issue from the onshore Oakendene substation.
- 3.21.22. An assessment of operational noise from the offshore windfarm was carried out in accordance with ETSU-R-97 The Assessment and Rating of Noise from Wind Farms (The Working Group on Noise from Wind Turbines, 1996).
- 3.21.23. Screening predictions using SoundPLAN computer noise modelling software (version 8.2) undertaken to assess whether the proposed offshore wind farm would result in noise levels at residences of above LA90, 10 mins 35dB in conjunction with other wind farms (specifically Rampion 1) at a wind speed of 10m/s. This is the threshold in ETSU-R-97 above which detailed assessment incorporating baseline surveys would be necessary).

- 3.21.24. There were no residential receptors predicted to experience noise above 35dB and therefore a detailed noise assessment incorporating noise monitoring was not carried out.
- 3.21.25. The criteria for defining sensitivity of receptors and magnitude of change are shown in Table 21-22 and Table 21-23 [REP6-145]. These criteria are defined and applied based on professional judgement, using recognised approaches to classification relevant to the receptor types, including BS 5228-1 (British Standard Institute, 2014a), BS 5228-2 (British Standard Institute, 2014b), BS 4142 (British Standard Institute, 2019) and DMRB (Standards for Highways, 2020), all of which represent good practice for noise and vibration within EIA.
- 3.21.26. The overall significance of effect rating is based on the evaluation of significance matrix in Table 21-24 [REP6-145].
- 3.21.27. In addition to an assessment of significance based on sensitivity of receptor and magnitude of change, an assessment of significance was undertaken in relation to the NPSE (Defra, 2010) and the impacts on health. This considered a set of absolute noise levels at which the following descriptions were applied:
- NOEL – No Observed Effect Level (the level below which there is no detectable effect on health and quality of life due to the noise).
 - LOAEL – Lowest Observed Adverse Effect Level (the level above which adverse effects on health and quality of life can be detected).
 - SOAEL – Significant Observed Adverse Effect Level (the level above which significant adverse effects on health and quality of life occur).
- 3.21.28. Table 21-26 summarises the key noise exposure levels (LOAEL and SOAEL) at the different phases of the Proposed Development and according to the nature of source in the assessment for residential receptors. Where the Proposed Development would result in notable increases in absolute noise level above the LOAEL (considered to be +3 dB), reasonable steps should be taken to mitigate and minimise the adverse effects of noise. Where the Proposed Development would result in notable increases in absolute noise levels above SOAEL (considered to be +1 dB), mitigation should be applied to avoid this increase, whilst taking into account the guiding principles of sustainable development.
- 3.21.29. For noise and vibration, a ZOI approach was adopted for the CEA to ensure direct and indirect cumulative effects were appropriately identified and assessed as follows:
- Construction phase – 500m from the temporary construction compounds, landfall, and onshore substation.
 - Operation and maintenance phase (onshore substation) – 1km from the onshore substation boundary.
 - Operation and maintenance phase (WTGs) – 20km from the offshore WTGs.
- 3.21.30. Developments considered as part of the of the noise and vibration CEA are listed in Table 21-41 [REP6-145].
- 3.21.31. No significant cumulative effects were identified in relation to potential effects of the Proposed Development on noise and vibration from construction, operation and maintenance, and decommissioning.

- 3.21.32. Transboundary effects arise when impacts from a development within one EEA state(s) affects the environment of another EEA state(s). There is no potential for significant transboundary noise and vibration effects upon the interests of EEA states.
- 3.21.33. An inter-related effects assessment considered LSE from multiple impacts and activities from the construction, operation and maintenance and decommissioning phases of the Proposed Development on the same receptor, or group of receptors Chapter 30: Inter-related effects, Volume 2 of the ES [REP6-165]. The assessment concluded that following the implementation of the embedded environmental measures, there are no significant inter-related effects on receptors considered in the ES. It is not anticipated that any further receptor-led inter-related effects will occur that are of any greater significance compared to the impacts considered already within the ES chapters, and it is not anticipated that project-lifetime inter-related effects of greater significance than those considered in isolation for each individual phase.
- 3.21.34. Table 21-44 of Volume 2, Chapter 21: Noise and Vibration, of the ES [REP6-145] provides a summary of the assessment of significant effects, any relevant embedded environmental measures and the residual effects on noise and vibration receptors. Table 21-20 of the same document provides a description of the embedded environmental measures and sets out how they would be secured.
- 3.21.35. The ES [REP6-145] concludes that the effects of the Proposed Development in relation to noise and vibration are Not Significant. It is therefore assessed as being in accordance with NPS EN-1, NPS EN-3 other national policy and local planning policy relating to noise and vibration. The application is supported by a Statutory Nuisance Statement [APP-032] which considered possible sources of nuisance arising from the Proposed Development under the provisions of section 79(1) of the Environmental Protection Act 1990. Statutory Nuisance Statement [APP-032] Section 3.1 outlines how the Applicant proposes to mitigate or limit nuisance in relation to noise and vibration.

Examination Issues

- 3.21.36. The main issues in the Examination were:
- Working hours.
 - Level of information on phasing and duration of construction activities in advance of detailed design.
 - Noise levels during the operational phase of the Proposed Development.
 - Appropriateness of applying BS5228.
 - The impact of noise from Washington Compound on the SDNP.
 - Impact from noise and vibration on users and residents of the SDNP.

Working hours

- 3.21.37. At the start of the Examination working hours for the Proposed Development set out in the then current OCoCP [APP-224] were 07:00 to 19:00 hours Monday to Friday, and 08:00 to 13:00 hours on Saturday with no activity outside these hours including Sundays, public holidays or bank holidays to take place apart from under the following circumstances:

- Where continuous periods (up to 24 hours, 7 days per week) of construction work would be required for HDD.
 - For other works requiring extended working hours such as concrete pouring which would require the relevant planning authority to be notified at least 72 hours in advance.
 - For the delivery of AIL to the connection works, which may cause congestion on the local road network, and would require the relevant highway authority to be notified at least 72 hours in advance.
 - As otherwise agreed in writing with the relevant planning authority.
- 3.21.38. These working hours were also reinforced by Commitment C-22 in the Commitments Register [REP6-227] secured by Requirement 22 (CoCP) in the draft DCO [REP6-007].
- 3.21.39. The ExA raised the issue of working hours at ISH1 [REP1-033] being specified in the OCoCP rather than as a Requirement in the draft DCO and the potential of noisy and disruptive HGV movements being experienced by residents as early as 6:00 hours in the morning and as late as 20:00 hours in the evening Monday to Friday and 7:00 hours in the morning and 14:00 hours in the afternoon on Saturdays. The latter based on the following wording in the OCTMP [PEPD-35a] *“Construction HGV movements associated with the onshore elements of the Proposed Development will normally take place during the core working hours, and for the hour before and after these core working hours, due to the distances involved in reaching some of the remote construction sites”*.
- 3.21.40. The Applicant took away actions [EV3-020, Actions 12 and 13] to provide a note on options for ensuring HGVs would not arrive on site outside of the agreed construction hours at Deadline 1 and consider whether working hours should form a Requirement of the draft DCO at Deadline 2.
- 3.21.41. At Deadline 1 in response to Action 12 [REP1-018, the Applicant noted that a number of RRs and oral submissions made by IPs at ISH1 [REP1-033] requested a change to the proposed construction working hours to include ‘shoulder hours’ to minimise potential disruption at the start and finish of the working day. In response therefore, the Applicant committed to update the Commitments Register [REP6-227] and amend the OCoCP [REP6-224] as follows:
- “Core working hours for construction of the onshore components will be 08:00 to 18:00 Monday to Friday, and 08:00 to 13:00 on Saturdays, apart from specific circumstances that are set out in the OCoCP, where extended and continuous periods of construction are required.*
- Prior to and following the core working hours Monday to Friday, a ‘shoulder hour’ for mobilisation and shut down will be applied (07:00 to 08:00 and 18:00 to 19:00). The activities permitted during the shoulder hours include staff arrivals and departures, briefings and toolbox talks, deliveries to site and unloading, and activities including site and safety inspections and plant maintenance. Such activities shall not include use of heavy plant or activity resulting in impacts, groundbreaking or earthworks.”*
- 3.21.42. Both the final version of the Commitments Register [REP6-227] and final version OCoCP [REP6-224] included this change.
- 3.21.43. At Deadline 2 in response to Action 13 [REP2-018], the Applicant considered that the working hours would be appropriately secured through a stage specific CoCP

secured through requirement 22 of the draft DCO. This approach would allow scope for a stage specific CoCP to include construction working hours to accommodate particular local circumstances within a stage if necessary, and the Applicant be held to comply with those tailored arrangements, which would not be possible if hours were specified in the DCO without an application for amendment.

Level of information on phasing and duration of construction activities in advance of detailed design

- 3.21.44. The level of information on the phasing, sequencing, and duration of construction activities on which to base the accurate assessment of noise and vibration impacts was raised by Horsham DC in its PADS at the start of the Examination [AS-010] and highlighted in its LIR [REP1-044].
- 3.21.45. This issue was subject to discussion between Horsham DC and Applicant throughout the Examination. The final position at the end of the Examination set out in the SoCG between Horsham DC and the Applicant [REP6-245] was that the issue had not been agreed.
- 3.21.46. At the end of the Examination Horsham DC's position was that the draft DCO submission still did not provide sufficient detail on the phasing, sequencing and duration of construction activities, due to the nature of the draft DCO implementation as a phased project [REP6-245].
- 3.21.47. The Applicant's position [REP6-245] was that a programme of works would be supplied to the relevant planning authorities prior to the commencement of onshore construction secured by Requirement 10 of the draft DCO [REP6-007].
- 3.21.48. A worst-case construction noise assessment had been undertaken in Chapter 21: Noise and vibration, Volume 2 of the ES [REP6-154] and Commitment C-263 in the Commitments Register [REP6-227] secured in the Recommended DCO by Requirement 22 (CoCP) would require a review of the assessment during detailed design. A NVMP would then be drafted for each stage, and approved prior to the commencement of that stage, in accordance with the ONVMP [REP5-111] also secured by Requirement 22 of the Recommended DCO.

Noise levels during the operational phase of the Proposed Development

- 3.21.49. The level of noise during the operational phase of the Proposed Development from Oakendene Substation, was a raised by Horsham DC in its PADS at the start of the Examination [AS-010] and highlighted in its LIR [REP1-044].
- 3.21.50. This issue was subject to discussion between Horsham DC and Applicant throughout the Examination. At the end of the Examination the SoCG between Horsham DC and the Applicant [REP6-245] noted that the issue had not been agreed.
- 3.21.51. The ExA asked questions on operational noise in its WQs [PD-009, NV 1.6] and FWQs [PD-012, NV 2.1 and NV 2.2]
- 3.21.52. Horsham DC's final position was that given the low background noise levels in this part of its District, they were still of the view that the noise impacts had not been fully assessed and that noise levels below the levels detailed in Commitment C-231 of the Commitments Register [REP6-227] could still result in significant noise impact to residential amenity. Horsham DC proposed the use of a research paper

published in February 2005 by the University of Salford for Defra entitled “*Proposed criteria for the assessment of low frequency noise disturbance*”, known by the contract number NANR45.

- 3.21.53. The Applicant’s position in contrast, was that BS 4142:2014+A1:2019 (BSI, 2019) used in its operational noise assessment in Volume 2, Chapter 23: Noise and Vibration of the ES [REP6-145] was the most appropriate assessment methodology for substation noise and associated low frequency components. It explained that while BS 4142:2014+A1:2019 states “*The standard is not applicable to the assessment of low frequency noise.*” the Association of Noise Consultants (ANC) (2020) technical guidance note on BS 4142:2014+A1:2019 states that “*BS 4142 does not necessarily exclude such a wide range [10 – 160 Hz] and It would be reasonable to use BS 4142 down to 50 Hz and possibly lower as part of a tonality assessment*”.
- 3.21.54. The 100 Hz components of acoustic energy are the most onerous when assessing operational substation noise, with relatively negligible acoustic energy below 50 Hz. Consequently, the issue of low frequency noise was considered for noise modelling considerations, assessment of noise emission from the operational substations and in the design of mitigation (i.e. transformer enclosures with an insertion loss of 20dB at 100 Hz). In addition, as agreed with Mid Sussex DC, an indicative noise break-in assessment was undertaken to illustrate that expectant low frequency noise would not give rise to any adverse effects.
- 3.21.55. With regard to NANR45, the Applicant explained that it is a procedure developed by Salford University to help assist Environmental Health practitioners specifically handle complaints of low frequency noise, and as such it is not a recognised guidance document in the context of assessing industrial noise for planning applications. BS 4142:2014+A1:2019 makes reference to NANR45 in the context of investigating specific complaints about low frequency noise where access to the inside of affected properties and rooms is possible – the NANR45 measurement procedure requires measurements to be undertaken inside the affected rooms with precision to “within a few centimetres” of where the noise is an issue.

Appropriateness of applying BS5228

- 3.21.56. The appropriateness of applying BS 5228-1:2009 + A1:2014 Code of practice for noise and vibration control on construction and open sites. Part 1: Noise (BSI, 2014a) was raised in Horsham DC’s PADS at the start of the Examination [AS-010] and highlighted in its LIR [REP1-044].
- 3.21.57. The SoCG [REP6-245] indicates that this issue was subject to discussion between Horsham DC and the Applicant throughout the Examination. The final position at the end of the Examination set out in the SoCG between Horsham DC and the Applicant [REP6-245] was that the issue had not been agreed.
- 3.21.58. The ABC method, described in BS 5228-1:2009 + A1:2014, uses absolute threshold levels (lowest threshold of 65dB for daytime, 55dB for evening (and Saturday afternoon and Sunday daytime) and 45dB for night-time) and was used by the Applicant in the ES assessment of noise [REP6-145]. Horsham DC’s final position was that with the adoption of the values in BS5228 annex E, ABC thresholds were not sufficiently protective of noise sensitive receptors in rural locations where background noise levels are very low during the day and at night. In Horsham DC’s view significant adverse effects may occur at these locations below the thresholds

used in the ABC method and this should be accounted for in the assessment of noise and vibration impacts. Further, Horsham DC noted that the assessment methodology in Annex E states that other project-specific factors, such as the number of receptors affected and the duration and character of the impact, would also determine if there is a significant effect.

- 3.21.59. In response, the Applicant noted that Horsham DC referred to paragraph E.5 in Annex E of British Standard 5228 (British Standards Institution (BSI), 2014). However, the criteria within that paragraph are specifically related to long term earth moving in a single area, akin to surface extraction works, which does not represent the construction activity as part of the Proposed Development. The Applicant considered that the advice within Annex E paragraph E.2 (BSI, 2014) was more appropriate.
- 3.21.60. As a consequence, the approach to construction noise assessment in Chapter 21: Noise and vibration, Volume 2 of the ES [REP6-145] applied the ABC method (as specified within E.3.2) and was consistent with the method as set out by BS5228 (BSI, 2014) as being appropriate for the assessment of construction noise related to construction projects of significant size.
- 3.21.61. The Applicant also noted the fact that BS5228 is a statutorily supported approach to the assessment of construction noise. Section 71 of the Control of Pollution Act 1974 (CoPA74) provides the Secretary of State the power to prepare and approve codes of practice for the purpose of giving guidance on appropriate methods for minimising noise; including the power to approve such codes of practice issued or proposed to be issued otherwise than by the Secretary of State as in the opinion of the Secretary of State are suitable for the purpose. The Control of Noise (Code of Practice for Construction and Open Sites) (England) Order 2015 approves BS 5228 part 1 (BSI, 2014) as the code of practice for assessing construction noise under s71 of CoPA74.

The impact of noise from Washington Compound on the South Downs National Park

- 3.21.62. In its WR submitted at Deadline 1 [REP1-052] SDNPA was concerned that the construction compound proposed by the Applicant for Washington, whilst outside of the SDNP was likely to have a prolonged impact on residents of Washington Village, which is located within the SDNP. The SDNPA considered that with the main access to the village located opposite the proposed location to the compound it was likely that noise, vibration and increased traffic were likely to cause harm to the amenity of residents in the village and users of the facilities.
- 3.21.63. This issue was subject to discussion between the SDNPA and Applicant throughout the Examination. The final position at the end of the Examination set out in the SoCG between the SDNPA and the Applicant [REP6-254] was that the issue had not been agreed.
- 3.21.64. The Applicant's position in the SoCG [REP6-254] was that it had undertaken an assessment of traffic noise and vibration on the A283 (Link 17 within Chapter 4 of the ES Addendum (Volume 2, Chapter 32 Rev A) [REP1- 006]). There would be no increase in Basic Noise Level from the construction road traffic due to the high baseline flows. Similarly additional vibration due to the location of the temporary construction compound entrance was considered by the Applicant to be negligible.

The road traffic noise and vibration increases were therefore both negligible, and the Applicant did not consider this element detrimental to the amenity of residents.

- 3.21.65. Further, contrary to SDNPA's assertion in its WR [REP1-052] that it did not appear that an assessment of the noise emanating from the compound itself had been undertaken, the Applicant contended that it had been assessed. It highlighted the assessment detailed within Chapter 21: Noise and Vibration, Volume 2 of the ES [PEPD-018]. Noise from the compound was predicted at representative residential and leisure receptors at:
- Green Farmhouse, The Pike.
 - Washington Paddocks, London Road.
 - Tilley's Cottage, The Pike.
 - 3 Settatrees, London Road.
- 3.21.66. Details of the plant assumptions used in the Temporary Construction Compound (TCC) construction noise assessment were presented in Table 4.1 and Table 4.2 of Appendix 21.2 Construction plant list Volume 2 [PEPD-027].
- 3.21.67. Table 21-28 of ES Chapter 21 showed the results of the assessment at these closest receptors to the TCC. Worst-case noise levels were approximately 10dB below the threshold of significance at all receptors during all phases of operation at the TCC. The Applicant therefore concluded that there were no predicted significant effects due to noise from the use of the TCC.
- 3.21.68. In addition, the Applicant highlighted Commitment C-263 in the Commitments Register [REP5-086] which would provide for additional noise assessment to be carried out once Contractors had been appointed and detailed design is progressed. Noise from activities at the TCC would also be covered by a NVMP, which would be supplemented by noise and vibration monitoring. These are secured through Requirement 22(3)(g) of Recommended DCO.

Impact from noise and vibration on users and residents of the South Downs National Park

- 3.21.69. SDNPA first raised the issue of the impact of construction noise and vibration on users and residents at Deadline 4 in its response to the ExA's Action Points from ISH2 [REP4-085].
- 3.21.70. The final position at the end of the Examination set out in the SoCG between the SDNPA and the Applicant [REP6-254] was that the issue had not been agreed.
- 3.21.71. In SDNPA's view, there had been insufficient consideration of visitors and residents of the SDNP in respect of noise and vibration. It noted that within Chapter 21 of the ES, the effects on the National Park were reported and concluded on the basis of the National Park as a single receptor, rather than from multiple receptors. Further, it considered that whilst the progress of construction would move forward after a matter of weeks, regular users of a single footpath or walking route were likely to experience the effects for a prolonged period as the construction corridor progresses. It was therefore the SDNPA's opinion that the conclusions in respect of the effects of noise and vibration within the SDNP were underestimated.
- 3.21.72. In response, the Applicant considered that the users of the SDNP have been considered. Chapter 21: Noise and vibration, Volume 2 of the ES [REP6-145] assessed the impact of the Washington Temporary Construction Compound (TCC)

which would be close to the boundary of the SDNP and was expected to be in place for the duration of construction. This TCC would be located next to the A283, where the tranquillity is relatively low as reflected on the SDNPA Tranquillity Study (SDNPA, 2017). The noise impact at this location was concluded to be not significant due to the low magnitude of impact, the temporary nature and the existing low tranquillity in this location.

- 3.21.73. The Applicant also pointed out that Chapter 21: Noise and vibration, Volume 2 of the ES [REP6-145] assessed the presence of the trenchless crossings, including those at Michelgrove (TC-12) and Sullington Hill (TC-15), are in areas of higher tranquillity near PRow and Open Access Land at Sullington Hill and therefore high sensitivity in the assessment. This included periods of continuous working while crossings are undertaken, and it was acknowledged this would temporarily affect tranquillity in these locations. Chapter 21: Noise and vibration, Volume 2 of the ES [REP6-145] concluded that these are not significant effects when the short-term duration of such works was taken into account. Access routes associated with accesses A-26 and A-28 cross the areas of higher tranquillity too and were assigned high sensitivity for noise and vibration. While it was predicted that there would be some impact, the assessment did not identify significant effects at receptors on these routes when considered against the criteria in British Standard (BS) 5228-1:2009 + A1:2014 Code of practice for noise and vibration control on construction and open sites. Part 1: Noise (British Standards Institute, 2014).
- 3.21.74. In addition, the Applicant considered that vehicle pass-bys on haul roads were low impact, due to the very limited duration that users of the National Park would be exposed to noise from such events. The Applicant also considered that the impact from the trenching works would not be significant due to the very localised nature of these works that progress at a speed of approximately 35m per day.
- 3.21.75. An update on those SoCGs considered of relevance to noise and vibration is provided below.
- 3.21.76. As detailed in their SoCG submitted at the end of the Examination, all matters in respect of noise and vibration had been recorded as agreed between West Sussex CC and the Applicant [REP6-255]. This was on the basis that West Sussex CC confirmed that for all noise and vibration matters they would ultimately defer to the views of the relevant Local Authority Environmental Health Officers (EHO) who hold detailed expertise in this field.
- 3.21.77. The following matters remained not agreed between Horsham DC and the Applicant [REP6-245]:
- The level of information on phasing and duration or works in advance of detailed design.
 - Noise levels during the operational phase of the Proposed Development.
 - The appropriateness of applying BS5228-1.
- 3.21.78. The following matters remained not agreed between the SDNPA and the Applicant [REP6-254]:
- The impact of noise from Washington Compound on the SDNP.
 - The Impact from noise from other activities related to the Proposed Development on users and residents of the SDNP.

- 3.21.79. As detailed in their SoCG submitted at the end of the Examination, all matters in respect of air quality had been agreed between Mid Sussex DC [REP5-092] and Arun DC [REP5-090] and the Applicant.

ExA's Findings

- 3.21.80. The ExA has considered the effects of the Proposed Development on noise and vibration in the context of the policy framework set by the Overarching National Policy Statement for Energy (NPS EN-1 2011), the National Policy Statement for Renewable Energy Infrastructure (NPS EN-3 2011) and the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5 2011).
- 3.21.81. The ExA has also given very considerable weight and importance to NPS EN-1 2024, NPS EN-3 2024 and NPS EN-5 2024 as a relevant consideration.
- 3.21.82. NPS EN-1 2011 Paragraph 5.11.4 acknowledges that excessive noise can have wide ranging impacts on quality of life, health, and use and enjoyment of areas of value such as quiet places and areas with high landscape quality. Factors include operational noise and its characteristics, and proximity to noise sensitive receptors (NSR), quiet places and other areas particularly valued for their acoustic environment or landscape quality (paragraph 5.11.3).
- 3.21.83. Paragraph 5.11.4 says that the applicant should identify noise sensitive premises and areas, and lists what the Applicant should include in the noise assessment, including:
- Characteristics of the existing noise environment.
 - A description of the noise generating aspects of the development, including any distinctive tonal, impulsive or low frequency characteristics.
 - How the noise environment would change, both during construction and operation and at different times of the day.
 - How the changes would affect the noise environment at noise sensitive premises and in noise sensitive areas.
 - Mitigation measures.
- 3.21.84. Paragraph 5.11.5 says that the noise impact of ancillary activities, such as increased traffic, should also be considered.
- 3.21.85. Paragraph 5.11.6 says that operational noise should be assessed with reference to NPS EN-3 2011 for renewables and NPS EN-5 2011 for electricity networks for assessing technologies using relevant British Standards.
- 3.21.86. Paragraph 5.11.7 states that an applicant should consult EA and NE, as necessary and in particular about assessment of noise on protected species or other wildlife. The results of any noise surveys and predictions may inform the ecological assessment. The seasonality of potentially affected species in nearby sites may also need to be taken into account.
- 3.21.87. Paragraph 5.11.8 says that the project should demonstrate good design through selection of the quietest cost-effective plant available, containing noise within buildings, optimising layout, and use of landscaping, bunds and noise barriers to reduce noise transmission.
- 3.21.88. The decision maker should not grant consent (paragraphs 5.11.9, 5.11.10) unless satisfied that the proposals would:

- Avoid significant adverse impacts on health and quality of life.
 - Mitigate and minimise other adverse impacts.
 - Where possible contribute to improvements to health and quality of life through effective management and control of noise.
- 3.21.89. The decision maker should also consider including measurable requirements or specific mitigation to ensure that noise levels do not exceed limits specified in the order.
- 3.21.90. The decision maker should also consider additional mitigation measures: paragraph 5.11.12 gives examples of engineering, layout and administrative mitigation and paragraph 5.11.13 states that the decision maker may need to consider requiring improved sound insulation to dwellings.
- 3.21.91. Paragraph 2.7.54 states that the ES should include a noise assessment as set out in Section 5.11 of NPS EN-1 2011. However, the noise created by wind turbines in operation is related to wind speed and is different to general industrial noise and an additional assessment of this noise should be made.
- 3.21.92. The applicant's assessment of noise from the operation of the wind turbines should use ETSU-R-97 (*"The Assessment and Rating of Noise from Windfarms"* published in 1997 by a working group set up by the Department of Trade and Industry), taking account of the latest industry good practice. This should include any guidance on best practice that the Government may from time to time publish (paragraph 2.7.56)
- 3.21.93. Section 2.9 provides additional technology-specific policy guidance in respect of noise.
- 3.21.94. NPS EN-1 2024 is broadly similar to NPS EN-1 2011 with the ExA noting the following additions:
- Paragraph 5.12.12 states that Applicants should submit a detailed impact assessment and mitigation plan as part of any development plan, including the use of noise mitigation and noise abatement technologies during construction and operation.
 - Paragraph 5.12.16 states that a development must be undertaken in accordance with statutory requirements for noise. Due regard must be given to the relevant sections of the Noise Policy Statement for England, the NPPF, and the government's associated planning guidance on noise. In Wales the relevant policy will be Planning Policy Wales and the Technical Advice Notes, as well as the Welsh Government's Noise and Soundscape Action Plan.
- 3.21.95. NPS EN-5 2024 is again broadly similar to NPS EN-5 2011 with the following additions:
- Paragraph 2.9.38 states transformers are installed at many substations and generate low frequency hum. Whether the noise can be heard outside a substation depends on a number of factors, including transformer type and the level of noise attenuation present (either engineered intentionally or provided by other structures).
 - Paragraph 2.9.38 states that for the assessment of noise from substations, standard methods of assessment and interpretation using the principles of the relevant British Standards are satisfactory.

- 3.21.96. Working hours and how they are secured was not an outstanding issue in any of the SoCGs or PADs at the close of the Examination. In addition, the ExA accepts the Applicant's argument that specifying working hours in the OCoCP [REP6-224] rather than the draft DCO [REP6-007] provides greater flexibility to address stage specific circumstances. The ExA therefore concludes that the Applicant has addressed this issue.
- 3.21.97. The ExA agrees with Horsham DC that an accurate assessment of noise and vibration impacts requires detailed knowledge of the phasing, sequencing and duration of activities. However, the ExA notes that for the purposes of the ES the Applicant has carried out a worst-case construction noise assessment and that if the Proposed Development is granted consent, the DCO would require that the relevant planning authorities, including Horsham DC receive an advance programme of works and approve a stage specific NVMP based on a review of the worst-case assessment before construction activities commence. The ExA therefore concludes that the Applicant has addressed this issue.
- 3.21.98. The ExA notes Horsham DC's concerns with regard operational noise of the substation in the context of the quiet rural location of the proposed Oakendene substation site. However, the ExA is content that the Applicant has taken this into account when applying BS 4142:2014+A1:2019 in the ES assessment [REP6-145]. Further it notes the typical use of the alternative, NANR45, proposed by Horsham DC in the specific investigation of complaints about low frequency noise where access inside of affected properties and individual rooms and NPS EN-5 2024 paragraph 2.9.39 states that for the assessment of noise from substations, standard methods of assessment and interpretation using the principles of the relevant British Standards are satisfactory. NPS EN-1 2011 (paragraph 5.11.6) and NPS EN-1 2024 (paragraph 5.12.9) also state that the assessment of operational noise should be assessed using the principles of relevant British Standards. The ExA therefore concludes that the Applicant has addressed this issue.
- 3.21.99. The ExA notes Horsham DC's concerns about the assessment of the impact of construction noise in the context of the quiet rural location of the district. However, the ExA also notes that BS 5228-part 1 (BSI, 2014), applied by the Applicant in the ES [REP6-145], is approved by the Control of Noise (Code of Practice for Construction and Open Sites) (England) Order 2015 as the code of practice for assessing construction noise under s71 of CoPA74. The ExA therefore concludes that the Applicant has addressed this issue.
- 3.21.100. The ExA concurs with the Applicant's assessment of the potential effects of the Proposed Development on noise and vibration receptors within Washington. The ExA therefore concludes that the Applicant has addressed this issue.
- 3.21.101. The ExA concurs with the Applicant's assessment of the potential effects of other activities associated with the Proposed Development on noise and vibration receptors within the SDNP. The ExA therefore concludes that the Applicant has addressed this issue.
- 3.21.102. The ExA is satisfied the Applicant has (NPS EN-1 2024 paragraph references in brackets):
- Identified noise sensitive premises and areas in its ES assessment [REP6-145] and considered all the issues listed in paragraph 5.11.4 (5.11.7 and 5.11.8);

- Considered the noise impact of ancillary activities, such as increased traffic in the ES [REP6-145] and Volume 2, Chapter 32: ES Addendum [REP6-006] (paragraph 5.11.5 (5.12.8)).
- Assessed operational noise operational noise with reference to NPS EN-3 2011 (NPS EN-3 2024) for renewables and NPS EN-5 2011 (NPS EN-5 2024) for electricity networks for assessing technologies using relevant British Standards (5.11.6 (5.12.9)).
- Demonstrated good design through selection of the quietest cost-effective plant available, containing noise within buildings, optimising layout, and use of landscaping, bunds and noise barriers to reduce noise transmission in the ES [REP6-145] and by preparing an ONVMP [REP5-111] (5.11.8 (5.12.15));
- Demonstrated that the aims that the Secretary of State should consider have been met before granting consent including avoiding adverse impacts on health and quality of life; mitigating other adverse impacts and where possible contributing to improvements to health would be delivered for the Proposed Development by the effective management and control of noise in the OCoCP [REP6-224].
- Considered additional mitigation measures in the ES [REP6-145] and the OCoCP [REP6-224] (5.11.12 and 5.11.13 (5.12.14)).

3.21.103. In addition, the ExA finds with regards to NPS EN-1 2024 the Applicant:

- Submitted a detailed impact assessment and mitigation plan including the ES [REP6-145], OCoCP [REP6-224] and ONVMP [REP5-111] as part of proposals for the Proposed Development, including the use of noise mitigation and noise abatement technologies during construction and operation (5.12.12); and
- Demonstrated that the Proposed Development would be undertaken in accordance with statutory requirements for noise and it has had due regard to the relevant sections of the Noise Policy Statement for England, the NPPF, and the government's associated planning guidance on noise (5.12.6).

3.21.104. Further the ExA concludes that the Proposed Development would be in compliance with NPS EN-3 2011 and 2024 and NPS EN-5 2011 and 2024. In particular regarding the former, the Applicant has carried out an assessment of noise from the operation of the wind turbines using ETSU-R-97 taking account of the latest industry good practice and with respect to the latter, the assessment of operational noise from the proposed substation at Oakendene has been undertaken using the principles of the relevant British Standard.

3.21.105. The ExA is satisfied that the Applicant has adequately addressed all other issues related to noise and vibration raised at all the Examination deadlines.

Conclusions

3.21.106. The ExA concurs with ES Chapter 21 [REP6-145] that the significance of effect from the Proposed Development on noise and vibration would be Negligible to Minor Adverse (Not Significant), caused by the construction activities.

3.21.107. 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 Requirements 6 (Cable parameters), 8 (Detailed design approval onshore substation), 15 (Highway accesses outside the SDNP), 16 (Highway accesses in the SDNP), 20 (Public rights of way), 22 (CoCP), 24 (Construction traffic management plan), 25 (Contamination

risk) and 29 (Control of noise during the operational phase) of the Recommended DCO.

- 3.21.108. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.21.109. The ExA attaches a Little Negative weight to this effect on noise and vibration matters in the planning balance.
- 3.21.110. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to noise and vibration and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.22. SOCIO-ECONOMICS

The Applicant's Case

- 3.22.1. The Applicant's Case is set out in the ES, Volume 2, Chapter 17 socio-economics [REP6-135], supplemented by:
- Volume 3 Chapter 17 Socio-economic figures [APP-097].
 - Volume 4 Appendices 17.1 Socio-economics method statement [APP-163].
 - Volume 4 Appendix 17.2 Socio-economics cost and sourcing report [APP-164].
 - Volume 4 Appendix 17.3 Socio-economics technical baseline [APP-165].
 - Volume 4 Appendix 17.4 Assessment of sensitivity of Public Rights of Way [APP-166].
 - Outline Skills and Employment Strategy (OSSES) [PEPD-038].
- 3.22.2. ES Chapter 17 [REP6-135] considers the LSE at a national, regional (Sussex) and local level on jobs, economic output, the visitor economy, in addition to both onshore and offshore recreation during the construction, operation and decommissioning phases of the Proposed Development.
- 3.22.3. ES Chapter 17 [REP6-135] socio-economic baseline assessment found that: "Sussex has a total population of around 1.71 million people, of whom 60% are of core working age (i.e. aged 16-64). Data from the Office for National Statistics (ONS) indicates that Sussex contributed over £40 billion gross value added (GVA) to the UK economy per annum. In relation to GVA per head of population, data shows a significant gap between Sussex and the UK. The employment rate in Sussex is approximately 79% when compared with the national average of 76%; while the average unemployment rate is 3.9%, slightly higher than the average for the UK as a whole (3.7%)."
- 3.22.4. The MDSs are summarised at table 17-18 of the ES Volume 2, Chapter 17 [REP6-135]. Embedded Environmental measures for socio-economics are listed at table 17-19 of the ES Volume 2, Chapter 17 [REP6-135] and the Commitments Register [REP6-227].
- 3.22.5. The Commitments Register [REP6-227] contains a number of Commitments that seek to minimise disruption to local residents, business, recreation receptors and the tourism sector including:

- C-22 Working hours.
- C-26 Noisy Construction activities.
- C-33 Stage Specific CoCP's.
- C-66 Minimise effects upon the SDNP.
- C-161 to C-163 Management Plans for PROW and South Downs Way.

3.22.6. The Commitment Registers [REP6-227] also contains Commitments that seek to maximise the socio-economic benefits of the Proposed Development as follows:

- C-34 Maximise access to the supply chain.
- C-35 Maximise ability of local people to access employment opportunities.

3.22.7. Commitments C-34 and C-35 seek to maximise the benefits of construction, operation and maintenance and decommissioning activity of the Proposed Development on the local economy and maximise local employment benefits. The measures to achieve these benefits are contained within the OSES which is secured by Requirement 33 of the Recommended DCO to be approved by the relevant planning authorities.

3.22.8. ES Chapter 17 [REP6-135] estimates that the construction phase of the Proposed Development would contribute:

- At the UK level 4,060 fulltime equivalent (FTE) jobs per annum and at the Sussex level 80 FTE jobs per annum.
- £233 million GVA per annum, totalling £936 million over the Proposed Development's construction programme. Of this, an estimated £16 million GVA (or around £4.1 million per annum) are anticipated to be generated by Sussex-based businesses.

3.22.9. And for the Operational and Maintenance phase of the Proposed Development ES Chapter 17 [REP6-135] estimates it will contribute:

- At the UK level 540 to 550 FTE jobs per annum and at the Sussex level 100 to 110 FTE jobs per annum.
- An annual GVA impact of around £54 million to the national economy, totalling £1.6 billion over the course of the Proposed Development's 30-year operational lifetime. At the Sussex level, an annual GVA impact of £14 million, adding up to £429 million over the Proposed Development's operational lifetime.

3.22.10. ES Chapter 17 [REP6-167] at table 17-40 summarises the assessment of residual effects for socio-economics. The ES concludes that the Proposed Development will provide positive benefits for the national economy (although not significant in EIA terms) whilst there will be minor to moderate effects upon access to and enjoyment of onshore recreation activity during construction and the remaining receptors negligible effects including on the volume and value of the visitor economy for the construction, operational and decommissioning phases.

Examination Issues

3.22.11. Socio-Economic effects were not considered an Initial Principal Issue in Annex C of the ExA Rule 6 Letter [PD-006] and was not considered to be a main issue in the Examination. Arun DC [AS-012], Adur DC [RR-002], West Sussex CC [AS-008], Brighton & Hove CC [RR-147], Mole Valley DC [RR-250], Horsham DC [RR-148], and Worthing BC [RR-422] raised concern with the following matters which the ExA discusses below:

- Adequacy of Outline Skills and Employment Strategy.
- Community benefits package.
- Socio-economic benefits package.
- Socio-economic effects upon Tourism.
- Socio-economic effects of construction activities upon local economy/businesses.

Adequacy of Outline Employment Skills Strategy

3.22.12. Various IPs including Arun DC and Horsham DC raised that they were not included within the stakeholder consultation list for the evolving OSES. However, the Applicant rectified this at the Pre-Examination Procedural Deadline with the submission of a revised OSES [PEPD-037].

3.22.13. In their RR's/PADS Arun DC [AS-012], West Sussex CC [AS-008], Brighton & Hove CC [RR-047], Mole Valley DC [RR-250] and Horsham DC [RR-148] raised concern regarding the OSES in relation to the following:

- Lacks detail on existing skill gaps, current level of provision, gaps and uncertainty in baseline data and initiatives.
- More firmed up commitment on opportunities for local business to access the supply chain.
- Induced economic impacts had not been assessed.
- That post development windfarm data or research had not been used in the assessment.
- Assessment should be at district level not just county level.

3.22.14. The Applicant responded at Deadline 1 [REP1-017] stating in regard to:

- Data that none of the baseline data limitations would materially affect the assessment and that the OSES is an evolving document to be developed in consultation with stakeholders into the final SES.
- Access to the supply chain that the OSES was an evolving strategy, and that the final SES will outline key objectives, initiatives, and activities.
- Induced economic impacts that typically affected by greater uncertainty, difficulty measuring and robustly defend.
- Ex ante data research that more local evidence used in the Applicants assessment and that this research related to onshore wind and found little evidence of negative impacts on tourism. The use of ex ante data is also associated with a greater risk of bias.
- District or County level assessment that assessment at the district level it created more uncertainty.

3.22.15. These matters remained unagreed at the close of the Examination. However, the ExA was satisfied that the OSES is an evolving strategy that is to be developed in consultation with stakeholders and approved by the relevant authorities.

Community Benefits Package

3.22.16. Several RRs/PADS including Arun DC [AS-012], Adur DC [RR-002], West Sussex CC [AS-008], and Horsham DC [RR-148] questioned why a Community Benefits Package should be separate to S106 legal agreement under the TCPA1990.

3.22.17. The Applicant responded at Deadline 1 [REP1-017] stating that Community Benefits Package is not legal requirement which sits outside of the development consenting regime. The Applicant pointed out that this issue has been reiterated by the

Secretary of State in the UK Government (Department for Energy Security and Net Zero) response to the consultation on Community Benefits for Electricity Transmission Network Infrastructure (December 2023).

- 3.22.18. The Applicant confirmed [REP1-017] that they intend to develop and implement a community benefits package of proposals with consultation with key stakeholders and local communities anticipated in the second half of 2024.
- 3.22.19. Arun DC [REP6-276] agreed the matter and noted the Applicants intention to consult on a Community Benefits Package. The ExA did not need to question the matter any further in the Examination.

Socio-Economic benefits

- 3.22.20. In their RRs/PADS Arun DC [AS-012], Brighton & Hove CC [RR-047], Horsham DC [RR-148], Mole Valley DC [RR-250], West Sussex CC [AS-008], Worthing BC [RR-422] and Adur DC [RR-002] questioned whether the:
- Socio-economic benefits for each LPA area were sufficient.
 - The lack of commitments to education and/or employment contributions within Brighton & Hove.
- 3.22.21. The Applicant responded at Deadline 1 [REP1-017] stating that the OSES was an evolving document and with consultation to take place with key skills and employment stakeholders and the final SES is likely to include details of education, training and employment objectives, initiatives and activities.
- 3.22.22. At the close of the Examination the issue remained outstanding, but the ExA was satisfied that the OSES is an evolving strategy that is to be developed in consultation with stakeholders and approved by the relevant authorities.

Socio-Economic effects upon tourism

- 3.22.23. In their RR's/PAD's Arun DC [RR-033], Mole Valley DC [RR-250], West Sussex CC [AS-008], Worthing BC [RR-422] and Adur DC [RR-002] raised concern over the lack of consideration of the tourism impacts/benefits/recreational resource of coastal locations in Chapter 17 of the ES and the resultant effects on visitor numbers from visual impacts of the WTG's.
- 3.22.24. The Applicant responded at Deadline 1 [REP1-017] stating that although the landscape and visual impacts have identified effects would occur at a limited number of tourist destinations, this does not necessarily translate into effects upon tourism and tourism assets and that they would be significant also.
- 3.22.25. At the Close of the Examination the issue remained a concern particularly West Sussex CC in their Closing Statement [REP6-280], but the ExA did not need to question on this matter in the Examination as the responses provided sufficient evidence to conclude on the matter.

Socio-Economic effects of construction activities upon local economy/businesses

- 3.22.26. IP's particularly [RR-278], [RR-050] and [RR-257] raised concerns in relation to impact upon and disruption too (other than CA related) tourism sites and local businesses specifically Oakendene Industrial Estate, Brookside Caravan Park &

Washington Caravan and Camping Park. These concerns were in relation to traffic and access, noise and vibration, and disruption from construction activities particularly associated with the Washington Construction Compound.

- 3.22.27. The Applicant responded at Deadline 1 [REP1-017] explaining that the ES assessment did not find any significant impacts and the construction activities mitigation referencing noise and traffic. The Applicant explained that a number of management plans have been included within the DCO including the Outline CoCP which provide the details of the proposed EEM's to manage the effects during construction phase and that the CoCP is secured by Requirement 22 of the draft DCO.
- 3.22.28. Traffic and Access matters are considered in section 3.16 and Noise and Vibration in section 3.22 of this Recommendation. Nevertheless, throughout the Examination these management plans including the Outline CoCP and the Commitments within the Commitment Register [REP6-227] were refined so the construction effects were reduced, and the management plans ensure that the effects were appropriately managed. Also, the ExA revised Requirement 8 within the Recommended DCO which provides for the submission of a traffic management and access plan for the proposed substation at Oakendene.
- 3.22.29. At the Close of the Examination the ExA was satisfied that the proposed mitigation in the form of the Outline CoCP and other management plans, the construction effect commitments within the Commitments Register [REP6-227] and Requirement 8 of the Recommended DCO that includes a traffic management and access plan for the proposed substation at Oakendene would adequately mitigate the construction effects of the Proposed Development and consequently the potential disruption effects upon the local businesses namely Oakendene Industrial Estate, Brookside Caravan Park & Washington Caravan and Camping Park.

ExA's Findings

- 3.22.30. NPS EN-1 2011 states that an Applicant should:
- Include an assessment of socio-economic impacts in the ES where the project is likely to have at a significant effect at the local or regional level.
 - Such an assessment should consider all relevant socio-economic impacts including the creation of jobs and training opportunities, provision of additional local services and local infrastructure, effects on tourism, influx of workers and cumulative effects with other projects.
- 3.22.31. It also requires the Secretary of State to:
- Have regard to the potential socio-economic impacts of new energy infrastructure when reaching a decision, including a consideration of any relevant positive provisions the developer is proposing to make.
 - That the decision maker may conclude that limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence.
- 3.22.32. The NPS EN-1 2024 requires a similar assessment but goes further in requiring information on:
- The sustainability of the jobs created, particularly where they will help develop the skills needed for the UK's transition to Net Zero.

- The contribution to the development of low-carbon industries at the local and regional level.
 - The use of local support services and supply chains.
- 3.22.33. It also suggests that the Secretary of State may include a Requirement for an employment and skills plan those details arrangements to promote local employment and skills development opportunities.
- 3.22.34. In terms of data used and the level of assessment within the OSES, the ExA considers that there is no substantiated technical evidence to suggest that the data or level of assessment was insufficient. The ExA therefore affords little weight to these matters and accordingly considers the Applicants approach to be appropriate to allow the Secretary of State to have regard to the potential socio-economic impacts of the Proposed Development.
- 3.22.35. The ExA welcomes the inclusion of the OSES and encourages the relevant local authorities and the Applicant to continue working collaboratively to ensure that the final SES, secured through Requirement 33, would be robust and maximise the benefits for the local economy.
- 3.22.36. At the close of the Examination the wording of Requirement 33 of the Recommended DCO had been agreed by Horsham DC. The ExA has no reason to come to a different conclusion on this matter.
- 3.22.37. At the close of the Examination the ExA was satisfied that effects upon tourism and disruption to the local economy/businesses had been adequately assessed within the ES in accordance with NPS EN-1. The ExA is satisfied with the proposed mitigation within the suite of construction management plans including the Outline CoCP which is secured by Requirement 22 of the Recommended DCO and consequently the socio-economic effects upon local business due to potential disruption effects.
- 3.22.38. Where not discussed in this section, the ExA is satisfied with the Applicant's responses to questions and matters in relation to Socio-Economic impacts. Overall, the ExA is satisfied, from the evidence submitted, that the Proposed Development has been adequately assessed in the ES, and that appropriate mitigation is set out in the Commitments Register [REP6-227], which is secured within the Recommended DCO at Requirement 33.
- 3.22.39. The ExA agrees that the assessment of residual effect is positive benefits for the national economy (although not significant in EIA terms) whilst there will be minor to moderate effects upon access to and enjoyment of onshore recreation activity during construction and the remaining receptors negligible effects including on the volume and value of the visitor economy for the construction, operational and decommissioning phases which could cause harm to receptors within the Proposed Development.

Conclusions

- 3.22.40. The ExA concurs with ES Chapter 17 [REP6-135] that the Proposed Development in socio-economic terms would have positive benefits for the national economy whilst there would be negative effects on recreational activities caused by the construction activities. Therefore, the ExA concurs with ES Chapter 17 that the

significance of effect from the Proposed Development to socio economics would be Negligible (Not Significant).

- 3.22.41. The ExA is also satisfied that positive benefits for the national economy (although not significant in EIA terms) whilst there will be minor to moderate effects upon access to and enjoyment of onshore recreation activity during construction and the remaining receptors negligible effects including on the volume and value of the visitor economy for the construction, operational and decommissioning phases are likely to arise from the Proposed Development.
- 3.22.42. The ExA concludes that the assessment set out in the ES meets the requirements of NPS EN-1 2011 and that the final SES based upon the OSES is likely to maximise the benefits for the local economy, which is secured within the Recommended DCO at Requirement 33.
- 3.22.43. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant, NPS EN-5 2011 and with other national and local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.22.44. Because the benefits of the Proposed Development are equally weighted with identified harm, the ExA considers there are no residual effects or issues which affect the planning balance.
- 3.22.45. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to socio-economics and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.23. WASTE MANAGEMENT

Application Summary

- 3.23.1. Waste Management does not form part of the ES. Instead, the application includes a standalone Outline Site Waste Management Plan (OSWMP) [APP-225]. The OSWMP draws on the waste hierarchy in respect of prevention, reuse, recycling, other recovery and disposal.
- 3.23.2. The OSWMP has been prepared and implemented through a seven-step process comprising: plan and prepare; design out waste; estimate waste arisings; waste management procedures; implementation; data management; and review and improve.
- 3.23.3. Section 4 of the OSWMP [APP-225] discusses resource efficiency and waste minimisation and includes commitments to designing out waste, effective project management and pre-fabrication and waste segregation and phasing, which would include the separating and deploying a colour coding scheme for different types of waste. Table 4-2 sets out the exemplar design, excavation and construction waste minimisation options including the use of pre-fabrication and the use of standardised materials at the design stage, cut and fill and supplier “take-back” schemes during the excavation and construction phase.

- 3.23.4. Section 5 of the OSWMP [APP-225] identifies the waste arising from the construction and the management procedures that would be in place. Table 5-1 summarises the waste materials that are expected to arise across the construction phase of the Proposed Development including steel, wood, dry mixed recycling and soil and rubble.
- 3.23.5. Section 7 of the OSWMP [APP-225] sets out the recommendations to reduce, re-use and recycle. These are not repeated verbatim here, but some of the measures are as follows:
- Diverting surplus materials into use elsewhere on the project, through collaboration with other Site Managers and/or contractors where possible.
 - Re-use of any temporary trackway used in the construction of accesses at the end of the Proposed Development (subject to relevant regulations being followed).
 - Ensure metals are segregated where possible. As a minimum, skips should be provided for steel, aluminium and non-ferrous skip and a mixed metal skip.
 - Ensure Contractor(s) will be directed to recycle. Where higher volumes are obtained onsite reuse, shredding and land spreading will be considered.
- 3.23.6. Importantly, section 7.6 of the OSWMP [APP-225] states that landfilling of waste from the Proposed Development should be avoided, which is consistent with local authority planning (aspire to zero waste to landfill by 2031 (West Sussex CC)).

Examination Issues

- 3.23.7. In its LIR, the SDNPA [REP1-049] defers to West Sussex CC for comments on waste (although it comments on the absence of a MRA which is discussed in the Soils and Agriculture, and Ground Condition Sections above). SDNPA characterised this topic matter as having a neutral or limited impact.
- 3.23.8. West Sussex CC LIR [REP1-054] identifies its policy W23 from the West Sussex Waste Local Plan 2014, which requires waste generated during construction, demolition or excavation is minimised, and opportunities are maximised for re-using and recycling waste that arises. However, the principal focus of section 14 of the LIR concerns minerals safeguarding which is discussed in the Soils and Agriculture and Ground Conditions Sections above.
- 3.23.9. The topic was not a major issue in this Examination. There were no issues of substance raised by IPs and the matter was not discussed during questioning.

ExA's Findings

- 3.23.10. Section 5.14 of NPS EN-1 2011 discusses site waste management. It requires Applicants set out the arrangements for the management of waste generated by a development proposal and that they prepare a Site and rem. It stipulates that this should include an assessment of the impact of waste arisings on the capacity of waste management facilities for at least five years of operation. It further states that the applicant should seek to minimise the volume of waste produced and the volume of waste sent for disposal unless it can be demonstrated.
- 3.23.11. In determining the application in waste matters, NPS EN-1 states that the Secretary of State should consider the extent to which the applicant has proposed an effective system for managing hazardous and non-hazardous waste arising from the

construction, operation and decommissioning of the Proposed Development. The Secretary of State should be satisfied that:

- Any such waste will be properly managed, both on-site and off-site.
- The waste from the proposed facility can be dealt with appropriately by the waste infrastructure which is, or is likely to be, available. Such waste arisings should not have an adverse effect on the capacity of existing waste management facilities to deal with other waste arisings in the area.
- Adequate steps have been taken to minimise the volume of waste arisings, and of the volume of waste arisings sent to disposal, except where that is the best overall environmental outcomes.

3.23.12. Section 5.15 of NPS EN-1 2024 is largely unchanged the 2011 version, with the only notable difference being a requirement for the Secretary of State to have regard to any potential impacts on the achievement of resource efficiency and waste reduction targets set under the Environment Act 2021 or wider goals set out in the government's Environmental Improvement Plan 2023.

3.23.13. The Applicant has placed a number of Commitments within the Commitments Register [REP6-227], notably C-31 and C-69 which deal with the minimising and re-using of waste materials and which will be included within the CoCP which is secured by Requirement 22 of the Recommended DCO. The OSWMP [APP-225] is a Certified Document in Schedule 16 of the Recommended DCO. A Site Waste Management Plan, which accord with the OSWMP is also secured by Requirement 22(4)(d).

3.23.14. No IP questioned the Applicant's approach taken in the OSWMP [APP-225], and no substantial issues were raised as to the appropriateness or otherwise of the Commitments in the Commitments Register [REP6-227] or their methods for being secured.

3.23.15. On the evidence before us, the ExA considers that the Proposed Development has adequately applied the waste hierarchy and has advanced a sound recommendation plan for the prevention, re-use and recycling of construction waste. There would, as such, be no LSE as a result of the construction of the Proposed Development.

Conclusions

3.23.16. The ExA concurs with the OSWMP [APP-225] the Applicant has adequately applied the waste hierarchy and has advanced a sound recommendation plan for the prevention, re-use and recycling of construction waste. The significance of effect from the Proposed Development from site waste management would be Negligible (Not Significant).

3.23.17. 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 Requirements in the Recommended DCO.

3.23.18. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.

- 3.23.19. The ExA considers there are no residual effects or issues which affect the planning balance.
- 3.23.20. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to waste management and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

OVERALL SCHEME EFFECTS

3.24. GOOD DESIGN

The Applicant's Case

- 3.24.1. The Good Design topic is overarching and therefore this section is not based upon any specific chapter of the ES but includes consideration of several different areas.
- 3.24.2. The Proposed Development is set out and its elements described in the ES, Volume 2, Chapter 4 [REP6-171], supplemented by Volume 3 Figures Parts 1 to 2 [APP-076 to APP-077] and Volume 4 Appendix 4.3 [APP-124].
- 3.24.3. A DAS [REP5-023] was submitted with the application. The DAS sets out the Design Principles and Parameters supplemented by Indicative Plans for the proposed onshore substation at Oakendene including landscape mitigation and for the proposed extension to the existing NGET Substation at Bolney including AIS and GIS options.
- 3.24.4. The MDSs are summarised at table 16-15 of the ES Volume 2, Chapter 4. Embedded Environmental measures for Good Design are listed under specific Chapters and the Commitments Register updated at deadline 6 [REP6-227].
- 3.24.5. An Offshore Design Statement was also submitted at Deadline 4 [REP4-137] which set out the evolution of the design of the Proposed Development in terms of the array size and layout and how the Applicant had sought to reduce the effects of the Proposed Development particularly, upon the SDNP.
- 3.24.6. The Design Parameters are secured within the recommended DCO at Requirement (s):
- 7 & 8 for the proposed Onshore Substation.
 - 6 for the Cable Corridor.
 - 9 for the extension to the existing NGET substation.
 - 2 to 5 (and conditions 1 & 2 of the DML) for the offshore elements.
- 3.24.7. The final Design of the proposed onshore substation and the extension to the existing NGET substation will be subject to the relevant authority's approval.

Examination Issues

- 3.24.8. Good Design was an initial principal issue in Annexe C of the ExA's Rule 6 letter [PD-006] in relation to the acceptability of the extent, justification and definition of the design choices, design parameters, height of the WTGs and number and size scenarios, and the proposed onshore substation. The ExA is also required to

consider the Proposed Development's compliance with NPS EN-1 criteria for Good Design.

3.24.9. Various RR's considered design in the wider sense, concerning design of the Proposed Development as a whole (particularly the size of the WTG's and the design of the proposed onshore substation) and specific impacts this may cause.

3.24.10. NE [RR-265] considered that the Offshore Design Principles do not fulfil the requirements for Good Design for the Offshore element of the Proposed Development. West Sussex CC considered in its LIR [REP1-054] that the Design principles within the DAS were not presented in a clear manner relevant to each topic, or confusingly overlap. Horsham DC had similar concerns [REP1-044] about the proposed onshore substation and advance planting.

3.24.11. The ExA considered the main issues in the Examination were:

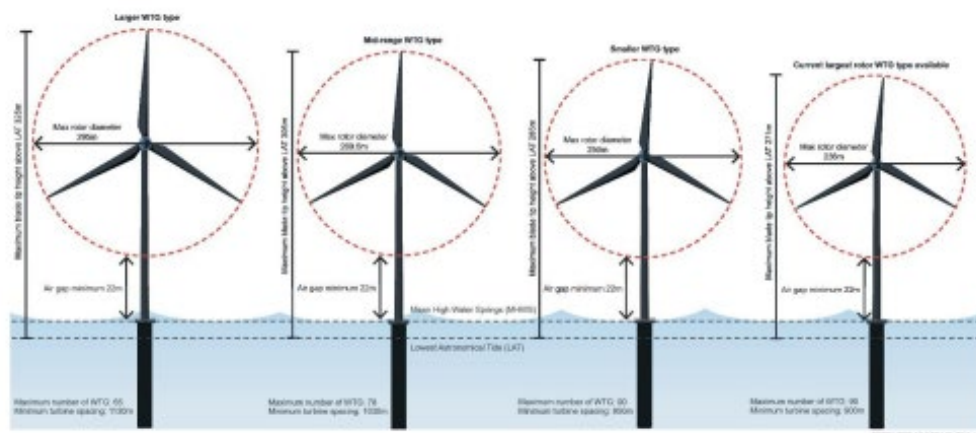
- Design choices and design parameters: and
- Good design criteria.

Design choices and design parameters in relation to height of the turbines and number and size scenarios, and the onshore substation.

3.24.12. To get a better understanding of the possible numbers and sizes of WTGs insofar as how this would affect the way the proposed array would be perceived the ExA asked the Applicant for further information regarding the MDSs for the number and size of WTGs in Annex D of Rule 6 letter [PD-006]. The Applicant responded at the Pre-Examination Procedural Deadline [PEPD-041] which detailed the possible number of WTGs of differing diameters. A summary of that is listed below:

- 90no. WTG rotor diameter of 250m and maximum height of 285m and maximum blade width of 9m: or
- 68no, WTG rotor diameter of 295m and maximum height of 325m and maximum blade width of 11m: and
- Total rotor swept area to not exceed 4,450,000.00m².

Figure 15 - WTG maximum design scenarios [PEPD-041]



- 3.24.13. The Applicant at Pre-Examination Procedural Deadline amended Requirement 2 of the draft DCO [PEDP-009] so that the Proposed Development would only consist of one size of WTGs in terms of height and rotor diameter. This was to secure a uniform design of individual WTGs and thus ensure the coherence of the proposed array in design and visual terms.
- 3.24.14. The Offshore Design Principles were a matter of much debate in the Examination including in response to NE submissions [RR-265], at ISH2 including the Applicants and SDNPA post hearing notes [REP4-072 & REP4-085]. The Applicant submitted several documents on the matter including the SLVIA MDS and Visual Design Principles Clarification Note [REP1-037] and Offshore Design Statement at deadline 4 [REP4-137]. The Offshore Design Principles of the Proposed Development are as follows:
- 'Field of view' – reducing the field of view or 'horizontal extent/lateral spread' of Rampion 2 and the visually combined lateral spread of Rampion 1 and the Proposed Development.
 - 'Proximity' - increasing the distance of the Proposed Development from most sensitive areas of coastline.
 - 'Wind farm separation zones' - achieving a separation between Rampion 1 and the proposed arrays.
 - 'Separation foreground' - avoiding juxtaposition of the proposed larger WTGs in front of smaller Rampion 1 WTGs.
- 3.24.15. The Offshore Design Principles are linked to the consideration of Seascape impacts and are therefore considered in detail within the Seascape Section of the Recommendation.
- 3.24.16. The ExA in WQs DE 1.3 and 1.4 [PD-009] asked the Applicant in relation to the definition of Design Principles for the proposed onshore substation and why the AIS/GIS options for the extension to the existing NGET substation could not be decided at the submission stage. The reason for which was that the GIS option has a greater building height and floor area but smaller fenced compound area whereas the AIS option has a smaller building height (excluding the infrastructure) and floor area but a larger fenced compound area. The Applicant responded at Deadline 3 [REP3-051] and stated in regard to:
- The proposed onshore substation that the design principles for Work No. 16 achieve 'Good Design' (as defined in National Policy Statement (NPS EN-1 2011 and 2024) including those set out to minimise the impact on the setting of Grade II Listed Oakendene Manor and that the revised DAS has sought to provide further definition or clarity of the principles identified in the DCO application including regarding the architectural strategy and provision of advance planting.
 - The extension to the existing NGET substation that design is contingent on the overall electrical design of the Proposed Development and will be developed in cooperation with National Grid who will be designing and constructing the Bolney extension bays therefore the decision of AIS or GIS design cannot be taken by National Grid until other technical design aspects are determined, which will occur post consent.

- 3.24.17. The ExA also asked the Applicant regarding the design parameters of the proposed onshore substation and the adequacy of the submitted evidence in relation to the impact upon the setting of the Heritage Asset Oakendene Manor. This is also considered in the Historic Environment Section of this Recommendation.

Good design criteria

- 3.24.18. The ExA in WQ DE1.1 [PD-009] asked the Applicant how the Good Design provisions of NPS EN-1 2011 were met for the whole of the Proposed Development. The Applicant responded at Deadline 3 [REP3-051] referencing their answer to DE 1.3 above and committing to the submission of an Offshore Design Statement setting out how the offshore elements of the Proposed Development achieve 'Good Design' at Deadline 4.
- 3.24.19. The ExA in WQ DE 1.2 [PD-009] asked The Applicant and Horsham DC on the need for a Design Code for the proposed onshore substation. The Applicant responded at Deadline 3 [REP3-051] and considered that the design principles in the DAS provide the appropriate and necessary embedded environmental measures, reflecting the mitigation hierarchy. The addition of a design code would not provide any additional benefit beyond that which could be secured in the design principles.
- 3.24.20. Horsham DC responded at Deadline 3 [REP3-069] also stating that subject to the DAS setting out clear, specific, and unambiguous set of design requirements for the physical development of the proposed onshore substation site at Oakendene, together with amended Requirement 8 to capture all elements of the proposed onshore substation development, would, negate the need for a certified Design Code.
- 3.24.21. West Sussex CC were concerned in its LIR [REP1-054] about the quality of the Design principles within the DAS not presented in a clear manner relevant to each topic, or confusingly overlap particularly regarding the Design elements within the outline landscape plan.
- 3.24.22. The Design Principles were improved at Deadline 3 and 5 with the submission of the revised DAS [REP5-023]. At the close of the Examination West Sussex CC in its SoCG [REP5-094] agreed this matter. Horsham DC in their SoCG [REP5-091] were working towards agreement on this matter, with not all issues agreed, however the ExA draws some comfort from Horsham DC having the ability to influence the design and landscape details via the approval of Requirement 8.
- 3.24.23. The ExA did not need to question any further on this matter in the Examination.

ExA's Findings

- 3.24.24. The criteria for good design in energy infrastructure are set out in NPS EN-1 2011 at section 4.5. Applicants should:
- Demonstrate the evolution of the proposed design and set out reasons for the option selected.
 - Demonstrate how siting and appropriate technologies have been used to mitigate adverse effects; and
 - Take independent professional advice on design.
- 3.24.25. In reaching a decision the Secretary of State should be satisfied that:

- Aesthetics and function, including fitness for purpose and sustainability, have been considered as far as possible.
 - Developments are sustainable (sensitive to place, efficient use of natural resources, matched by good aesthetics) and as attractive, durable and adaptable as possible.
 - Opportunities have been taken to demonstrate good design in terms of siting in relation to existing landscape character, landform, and vegetation; and
 - The design and sensitive use of materials in elements such as substations has been considered, to contribute to the quality of the area.
- 3.24.26. The NPS EN-1 2024 sets out a broader approach to good design than the extant NPS EN-1 2011, linking good design principles to other topic areas, including biodiversity, flood risk, heritage, landscape and views, land use and green infrastructure and soils.
- 3.24.27. Applicants are encouraged to ensure that good design is embedded into the development from its early stages, and to adhere to relevant design principles and by the appointment of a project board level design champion. It also suggests that the Secretary of State may wish to take independent advice, such as an independent design review.
- 3.24.28. The ExA notes that design evolution took place in the offshore array prior to the submission of the application by reduction in the array area both at scoping and the first statutory consultation stage to the design of the Proposed Development.
- 3.24.29. Design evolution also took place in the Onshore site selection process from Landfall to through the cable corridor to the selection of the proposed onshore substation site and the extension to the existing NGET substation. The ExA is satisfied that the Applicant's approach to Design evolution and process meets the NPS EN-1 2011 and 2024 criteria of Good Design.
- 3.24.30. The Design Principles also evolved through the Examination which the ExA considers the final version of the DAS [REP5-023] to be clearer, less ambiguous and the Design Principles relate to each topic area. The ExA acknowledges that the nature of energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area. The ExA is satisfied that the Applicants approach to Good Design for Sustainable infrastructure, sensitive to place and an appearance that demonstrates good aesthetic as far as possible met the criteria of NPS EN-1 2011 and NPS EN-1 2024.
- 3.24.31. The ExA is satisfied with the extent, justification and definition of the design choices and design parameters including the height of the WTGs, the number and size scenarios, and the onshore substations. The ExA is therefore satisfied that the Design Principles will ensure Good Design will be achieved at the detailed design stage for the Offshore array and Onshore Substations in accordance with NPS EN1 2011 and NPS EN-1 2024.
- 3.24.32. In the absence of any evidence to the contrary, the ExA is satisfied that the Applicant has complied with NPS EN-5 2011, Paragraph 2.4.1 in respect to resilience to climate change, and states that applicants should set out to what extent the Proposed Development is expected to be vulnerable, and, as appropriate, how it would be resilient to issues which include, but are not limited to, flooding. This is of relevance for good design in respect to the onshore substation at Oakendene.

- 3.24.33. Where not discussed in this section, the ExA is satisfied with the Applicant's assessment in the ES, or subsequently satisfied with the Applicant's responses to questions and matters in relation to Good Design.

Conclusions

- 3.24.34. Having considered the effects of the Proposed Development and the mitigation in relation to Good Design, the ExA considers that, the Applicant has considered the functionality and aesthetics as far as possible through the evolution of the design process. The Applicant has therefore demonstrated how the design process was carried out and how it has evolved. The ExA considers the Applicant's approach to Good Design has sought to advance the best design possible having regard to the nature of the development and that a WTG can only take one form and shape.
- 3.24.35. At the detailed design stage, guided by the Design Principles of the DAS, the design of the proposed onshore substation and extension to existing NGET substation would assist in ensuring that these elements contribute to the quality of the area as far as possible when the nature of the Proposed Development is considered.
- 3.24.36. The ExA concurs with the DAS [REP5-023] that the Applicant has adequately promoted good design in respect to the WTGs and for the onshore substation at Oakendene. The significance of effect from the Proposed Development from good design would be Negligible (Not Significant).
- 3.24.37. 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 Requirements in the Recommended DCO. This is particular prevalent by the ExA recommended changes to the final draft DCO [REP6-007] to Requirement 8 and for the insertion of a new Requirement 45 for site-specific plans for the Oakendene substation site and for the construction compounds at Climping and Washington to ensure good design at those sites.
- 3.24.38. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.24.39. The ExA considers there are no residual effects or issues which affect the planning balance.
- 3.24.40. Under the Transitional Arrangements, policy compliance with NPS EN-1 and EN-3 2024 is not required. The ExA has nevertheless identified that the Proposed Development has not fully evidenced NPS EN-1 2024's broader approach to good design, which requires good design to be demonstrated in areas such as biodiversity, flood risk, heritage, landscape and views, land use and green infrastructure and soils.
- 3.24.41. However, the ExA considers that the broad thrust of policies in NPS EN-3 2024 are not dissimilar to those to NPS EN-3 2011, rather than they require new applications to go further. Therefore, there is nothing in NPS EN-1 2024 which would render the current scheme to be considered unacceptable in good design matters when taking into account the regard to be had to it during the Transitional Arrangements.

3.25. GREENHOUSE GAS EMISSIONS

The Applicant's Case

- 3.25.1. This Section considers the effects of the Proposed Development on emissions of greenhouse gases (GHGs). The Applicant's assessment is presented in Chapter 29 of the ES [REP6-161] which documents the LSE of construction, operation and decommissioning of the Proposed Development with respect to GHGs. Climate change resilience is reported on in other relevant sections of this Recommendation.
- 3.25.2. The Applicant notes that the ES [REP6-161], should be read with particular reference to:
- Chapter 4 of the ES The Proposed Development [REP6-171].
 - Appendix 29.1: Supporting data for the GHG assessment [APP-222].
- 3.25.3. The ES Chapter 29 [REP6-161] states that the assessment has been undertaken in line with IEMA guidance for assessing GHG emissions and the principles defined in the Publicly Available Specification (PAS) 2080: Carbon Management in Infrastructure. To meet the requirements of the IEMA guidance (2022), and in line with the EIA Regulations, two assessment scenarios have been presented:
- The do-minimum where the Proposed Development is not built and the latest equivalent data for the UK grid average generation intensity is consumed.
 - The do-something scenario where the Proposed Development with embedded environmental measures is built. The expected policy impacts of the do-minimum scenario also underpin this do-something scenario.
- 3.25.4. The ES [REP6-161] states the assessment of GHG emissions includes a calculation of a carbon payback period which represents the time required before the Proposed Development has saved more GHG emissions, relative to electricity production by other means, than would be produced by the construction, operation and maintenance, and decommissioning phases.
- 3.25.5. The temporal scope of the GHG assessment considers GHG emissions across the lifetime of the Proposed Development. Timescales for the construction, operation and maintenance, and decommissioning phases of the Proposed Development have been assumed to be between 2025 and 2065:
- Construction – 2025-2030.
 - Operation and maintenance – 2030-2060.
 - Decommissioning – 2060-2065.

Constriction phase

- 3.25.6. The ES [REP6-161] explains that GHG emissions have been estimated by applying published GHG emissions factors to activities in the baseline (do-minimum scenario) and to those required for the Proposed Development (do-something scenario). The GHG emissions factors relate a given level of activity, or amount of fuel, energy or materials used to the mass of GHGs released as a consequence.
- 3.25.7. The ES [REP6-161] states that the approach to estimate the effects from the constriction phase was based on knowledge from other offshore wind farm projects and that the largest GHG emissions from the Proposed Development (do-something scenario) are likely to be related to embodied carbon. The embodied carbon describes the carbon footprint of a material, allowing for the sum of the energy

required in resource extraction, and any processing required, as well as the transport and supply logistics to the factory gate prior to transport to the Proposed Development for use, to be accounted for within the overall GHG estimation. Using the estimated material quantities and types, the embodied carbon of the construction material assets is calculated in the ES, giving its contribution to the overall GHG emissions from the construction phase. The ES explains GHG calculations for onshore construction traffic, marine vessels transporting all offshore materials and energy use from onshore construction processes.

Operation and maintenance phase

3.25.8. The ES [REP6-161] states that the approach to estimate the effects from the operation and maintenance phase associated with the do-minimum scenario is represented by the existing GHG emissions from within the proposed Order limits prior to construction and operation of the Proposed Development or by the GHG emissions arising from an alternative project design and assumptions. Since there is no physical development and activity at the location of the Proposed Development in the do-minimum scenario, the GHG emissions from the ES assessment prior to construction and operation will be zero. Therefore, the Applicant explains that for this assessment, the use of other alternative electricity generation methods has been considered.

3.25.9. The ES [REP6-161] states that the approach to estimate the effects from the operation and maintenance phase associated with the do-something scenario is calculated based on the GHG intensity of the Proposed Development (CO₂e/kWh) which measures the GHG emissions of the Proposed Development, measured in CO₂e, relative to the total predicted generation of the Proposed Development, measured in kWh. Operation and maintenance phase GHG emissions of the Proposed Development relate to activities including vessel and helicopter movements, staff commuting journeys, and material requirements. The annual energy generation from the Proposed Development during the operation and maintenance phase has been calculated by multiplying the installed total offshore wind farm capacity (estimated at 1,200MW) by the number of hours in the year (8,760, based on 365 days per year) and by the appropriate load or capacity factor for the Proposed Development. An annual availability factor, which accounts for downtime for troubleshooting, maintenance and major corrective works, has been specified.

Decommissioning phase

3.25.10. The ES [REP6-161] states that the approach to estimate the effects from the decommissioning phase is assumed to include the decommissioning and removal of all structures above the seabed or ground level. Following the approach set out in Chapter 4 of the ES [APP-045] updated at Deadline 6 [REP6-171], it has been assumed for the GHG assessment that the wind farm array and offshore export cables are removed, although this would be determined at the time of decommissioning. Decommissioning would occur far into the future and therefore attempting to account for the fate of materials and the activity required for the end-of-life phase are associated with significant uncertainty. GHG emissions are therefore estimated on the assumption that decommissioning would be based on reverse installation. Offshore assumptions about numbers of vessels and equipment are therefore the same as described for the construction phase of the Proposed Development. For onshore it is anticipated that the onshore electrical cables would be left in-situ with ends cut, sealed and buried to minimise environmental effects

associated with removal. Should the onshore substation need to be decommissioned fully, however, the decommissioning works are likely to be undertaken in reverse to the sequence of construction works and involve similar levels of equipment.

GHG assessment

- 3.25.11. The ES [REP6-161] states that the significance of GHG emissions associated with the Proposed Development will be evaluated based on the extent to which the Proposed Development materially affects the ability to achieve national targets for decarbonisation.
- 3.25.12. The Applicant proposes a range of environmental measures which have been embedded into the Proposed Development outlined in the Commitments Register [REP6-227] and presented in Table 29-5 [REP6-161].
- C-248 - Embodied Carbon: There are embodied GHG emissions associated with the raw materials used to construct the Proposed Development. Where possible, choice of local sourcing of construction should be encouraged. Circular economy principles will be considered and deployed where possible. Carbon measuring and reporting would be undertaken.
 - C-243 - Fuel and energy consumption: Energy efficient and well maintained plant equipment should be used, as should mains electricity, if available, rather than diesel-fuelled portable generators. This will reduce GHG emissions from fuel and energy consumption.
 - C-244 - There are GHG emissions from construction traffic. Deliveries will be consolidated where possible and there should be 'no idling' vehicles. Sustainable modes of travel for the construction workforce will be encouraged.
 - C-51 - A Vessel Management Plan will be developed preconstruction which will determine vessel routing to and from construction areas and ports to minimise, as far as reasonably practicable, encounters with marine mammals. It will also consider vessel codes of conduct provided by WiSe Scheme, Scottish Marine Wildlife Watching Code (MWWC) and the Nature Scot "Guide to best practice for watching marine wildlife".
 - C-69 - Construction strategies will be implemented that will seek to maximise:
 - the reuse of excavated clean materials from the onshore cable construction corridor where practicable and feasible. Prior to a stage of construction, a Materials Management Plan (MMP) will be developed that outlines where excavated non-waste materials will be reused in line with the CL:AIRE (2011) DoWCoP. A declaration will be made to CL:AIRE by a Qualified Person that the MMP has been completed in accordance with the DoWCoP and that best practice is being followed; and
 - the reuse of excavated minerals from the onshore cable construction corridor as a resource, where they remain available following backfill and where their use is practicable and feasible. Prior to the stage of construction, a MMP will be developed which includes a specific minerals section which outlines how minerals will be identified, extracted and stored, and re-used.
- 3.25.13. The ES [REP6-161] states the Proposed Development would have a generating capacity in excess of 100MW with current estimated capacity of 1,200MW. The "GHG intensity" of electricity is a measure of how much GHG emissions are produced per kilowatt hour (kWh) of electricity consumed. The GHG intensity of the

Proposed Development is estimated as 12.7 gCO₂e/kWh. The annual energy generated by the Proposed Development is estimated to be approximately 6,533,576MWh per year, and 196,007,278MWh over the lifespan of the Proposed Development of around 30 years.

Do-minimum scenario

- 3.25.14. The ES [REP6-161] states that if the power output of the Proposed Development (up to 1,200MW/yr) over the course of the project lifetime, were delivered instead by the current UK grid electricity generation mix, the estimated CO₂ emissions would be equivalent to approximately 38,395ktCO₂e.

Do-something scenario

- 3.25.15. The ES [REP6-161] states that projected GHG emissions associated with the Proposed Development have been estimated to be approximately 2,494ktCO₂e. The breakdown of estimated GHG emissions by the different sources is described in Table 29-7 and Table 29-8 [REP6-161] and further information has been included in Appendix 29.1: Supporting data for the GHG assessment [APP-222].

Assessment of effects

- 3.25.16. The ES [REP6-161] states that the estimated lifetime GHG emissions saving of 35,901ktCO₂e is substantial relative to the current UK grid electricity mix (based substantially on fossil-fuelled generation), illustrating the GHG emissions savings that result from offshore wind electricity generation. During the period when GHG emissions from the Proposed Development would be at their highest level (short- and near-term construction activity), the Proposed Development would contribute up to 0.04 percent of the UK's carbon budget for the fourth carbon budget of 1,950MtCO₂e between 2023 to 2027. The Proposed Development GHG emission savings would equate to a 0.19 percent offset of the UK's fifth carbon budget of 1,725MtCO₂e between 2028 and 2032 and up to a 0.64 percent offset of the sixth carbon budget of 965MtCO₂e for 2033 to 2037. The Proposed Development would continue to offset GHG emissions throughout its operational life, and therefore make a positive contribution the UK Government target to reach net zero emissions in 2050.
- 3.25.17. The ES concludes [REP6-161] that the GHG effect of the Proposed Development is Beneficial (Significant), because the Proposed Development has net GHG emissions below zero, causing an indirect reduction in atmospheric GHG emissions which has a positive impact on the UK Government meeting their carbon budgets / targets.

Carbon payback period

- 3.25.18. The ES concludes [REP6-161], that the Proposed Development would 'pay back' the GHG emissions emitted during its lifetime in less than a year (approximately 10 months) on the assumption that it displaces electricity generation by fossil fuels. After this, it would continue to save GHG emissions throughout its lifetime contributing to the decarbonisation of the UK economy and the UK's net zero target.
- 3.25.19. The ES explains [REP6-161] that the approach to CEA for GHGs differs from the approach described in Chapter 5: Approach to the EIA, [APP-046] updated at Deadline 6 [REP6-173]. All global cumulative GHG sources are relevant to the

effect on climate change, and this is taken into account in defining the receptor as being of 'high' sensitivity'. Effects of GHG emissions from specific cumulative projects are not assessed, as there is no basis for selecting any particular (or more than one) cumulative project that has GHG emissions for assessment over any other. Additionally, the contextualisation of GHG emissions, by its nature, incorporates the cumulative contributions of other GHG sources which make up that context and therefore, the Applicant stated it has not been necessary to carry out a separate CEA of GHG emissions.

- 3.25.20. No transboundary or interrelated effects are anticipated from the Proposed Development.

Examination Issues

- 3.25.21. All relevant authorities in their respective LIRs acknowledged the positive effects from the Proposed Development on climate grounds. There were no representations that challenged that the Proposed Development would displace electricity generation by fossil fuels or would continue to save GHG emissions throughout its lifetime, contributing to the decarbonisation of the UK economy and the UK's net zero target.
- 3.25.22. There were no main issues in the Examination related to GHG emissions.

ExA's Findings

- 3.25.23. The ExA has considered the effects of the Proposed Development on GHG emissions in the context of the policy framework set by the Overarching National Policy Statement for Energy (NPS EN-1 2011 and 2024), the National Policy Statement for Renewable Energy Infrastructure (NPS EN-3 2011 and 2024).
- 3.25.24. NPS EN-1 2011 describes the energy sector's role in delivering the UK Government's climate change objectives "*by clearly setting out the need for new low carbon energy infrastructure to contribute to climate change mitigation*". It should be noted that at the time of writing NPS EN-1 2011, the UK's climate commitment was a target of 80 percent reduction relative to the 1990 baseline, but this has since been updated to 100 percent.
- 3.25.25. NPS EN-1 2024 includes the same principles relating to the GHG assessment as NPS EN-1 2011 accounting for updates to carbon reduction targets. NPS EN-1 2024 acknowledges that to achieve net zero by 2050 "*We will need to dramatically increase the volume of energy supplied from low carbon sources and reduce the amount provided by fossil fuels*". NPS EN-1 2024 also notes that the ES should include a whole life carbon assessment. The assessment in this appendix ensures compliance with this requirement.
- 3.25.26. Policies at an international, national and local level that are relevant to the GHG assessment, are listed in Table 29-1 of Chapter 29 of the ES [REP6-161].

Conclusions

- 3.25.27. The ExA concurs with ES Chapter 29 [REP6-161] that the significance of effect from the Proposed Development on climate effects would be Negligible (Not Significant).
- 3.25.28. The ExA is satisfied that the Proposed Development would make a positive contribution in respect to GHGs. The ExA is further satisfied that the embedded

mitigation proposed means GHG emissions associated with the Proposed Development would be minimised and that any necessary mitigation is adequately secured through the relevant Requirements in the Recommended DCO.

- 3.25.29. The ExA is aware of the Finch Judgement (2022 EWCA Civ 187) of 20 June 2024 in respect to the issue of the environmental statement omitting the GHG emissions when the oil extracted is eventually used producing downstream emissions. No IP raised the Finch Judgment as an issue during the Examination or the issue of downstream emissions. Because the Proposed Development relates to an OWF, the ExA is satisfied that the ES [REP6-161] considers the full scope of GHG emissions from the Proposed Development through construction, operation and maintenance, and decommissioning has been assessed. The ExA is satisfied there would be no downstream emissions from this Proposed Development and hence believe the Secretary of State can be satisfied on this basis.
- 3.25.30. The ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and NPS EN-5 2011 and by other national and local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.25.31. The ExA considers there are no residual effects or issues which affect the planning balance to avoid “double counting” the significant positive weight which has been taken into account in the NPS EN-1 2011 in respect to identifying the need for energy including offshore wind.
- 3.25.32. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to greenhouse gas emissions and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.26. MAJOR ACCIDENTS AND DISASTERS

The Applicant’s Case

- 3.26.1. Chapter 27 of the ES [REP6-157] deals with major accidents and disasters.
- 3.26.2. The ES has identified potential major accident and disaster sources, the human and environmental receptors in vicinity of the Proposed Development, and the route by which a source may affect each of these receptors, to understand which major accidents or disasters hazards are feasible. An assessment has then been made of the likelihood of it occurring, and the damage or injury it could cause, to understand which potential major accidents and disasters are considered to be either “significant” or “not significant”.
- 3.26.3. A desk study has been undertaken to identify potential major accident and disaster sources, and the baseline conditions relevant to the major accidents and disasters assessment have largely been informed by other environmental topics’ baseline data. For example, information about the location and designations of ecological features is informed by the terrestrial ecology and nature conservation topic.
- 3.26.4. The ES proposes a number of embedded environmental measures designed to avoid or minimise potential major accidents or disasters, examples are as follows:

- Safety zones will be sought around offshore infrastructure during construction, maintenance and decommissioning phases.
- Developing emergency response plans.
- Undertaking a risk assessment of the potential impacts of major accidents and disasters.
- Carrying out vehicle maintenance and refuelling of machinery within designated areas where spillages can be easily contained.
- Avoiding sensitive sites by the project footprint where practical.

3.26.5. The ES [REP6-157] states that when the embedded environmental measures to prevent, control and limit the potential for major accidents and disasters during the lifetime of the Proposed Development are taken into account, the likelihood of a major accident and disaster occurring would be low enough that there are no significant effects arising from major accident and disasters during construction, operation and maintenance, and decommissioning.

3.26.6. The ES [REP6-157] also states there would be no significant cumulative effects, inter-related effects or transboundary effects for major accident and disasters receptors from the construction, operation and maintenance, and decommissioning of the Proposed Development.

3.26.7. The prevention of major accidents and disasters and other safety measures for the offshore elements of the Proposed Development are controlled by the Recommended DMLs which are at Schedules 11 and 12 of the Recommended DCO. Requirements 27 and 28 of the (now) Recommended DCO secure the need for an operations and maintenance plan which includes a risk assessment for major accidents and disasters for both the proposed Oakendene substation (Work No.16) and the existing National Grid substation at Bolney (Work No.20). There are also a number of Commitments contained within the Commitments Register [REP6-227], which is a Certified Document in Schedule 16 of the Recommended DCO.

3.26.8. The Applicant confirms in the ES [REP6-157] that the Proposed Development is not captured by the Control of Major Accidents Hazards Regulations 1999 (COMAH) or other key legislation as outline in Table 27-1 of the ES.

Examination Issues

3.26.9. No local authority raised major accidents and disasters within their LIRs and none had the topic raised within their respective SoCGs.

3.26.10. The topic was not a major issue in this Examination. There were no issues of substance raised by IPs and the matter was not discussed during questioning.

ExA's Findings

3.26.11. The NPSs on Energy do not have a specific subsection on major accidents and disasters. Section 4.11 of NPS EN-1 2011, relating to safety, states that some energy infrastructure will be subject to the COMAH, which aims to prevent major accidents involving dangerous substances and limit the consequences to people and the environment of any that do occur. Applicants seeking to develop infrastructure subject to the COMAH regulations should make early contact with the Competent Authority and the Secretary of State should be satisfied that a safety assessment has been prepared, where required, and that the Competent Authority has raised no safety objections. Section 4.14 of NPS EN-1 2024 is broadly consistent with the above.

- 3.26.12. The Applicant has placed a number of Commitments within the Commitments Register [REP6-227], notably C-171 and C-172 which seek to minimise the risk from major accidents and disasters and provide a suitable risk assessment. These will be included within the CoCP which is secured by Requirement 22 of the Recommended DCO.
- 3.26.13. No IP questioned the Applicant's approach taken in Chapter 27 of the ES [REP6-157] and, because the Proposed Development is not captured by the COMAH Regulations, the Health and Safety Executive did not participate in the Examination. No IP raised any substantive concerns to the appropriateness of the Commitments in the Commitments Register or their methods for being secured.
- 3.26.14. The ExA is satisfied, from the evidence submitted, that the Proposed Development has been adequately assessed in the ES in terms of major accidents and disasters, and that appropriate mitigation is set out in the Commitments Register and relevant outline environmental management plans, which is secured within the Recommended DCO, as well as those matters secured within the Recommended DML. The ExA agrees that the assessment of residual effect is not significant in terms of effects arising from the Proposed Development, from major accidents which could cause harm to receptors within the Proposed Development, and any disasters.

Conclusions

- 3.26.15. The ExA concurs with ES Chapter 27 [REP6-157] that the significance of effect from the Proposed Development from major accidents and disasters would be Negligible (Not Significant).
- 3.26.16. 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 Requirements and Conditions in the Recommended DCO and DML.
- 3.26.17. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 3.26.18. The ExA considers there are no residual effects or issues which affect the planning balance.
- 3.26.19. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to major accidents and disasters and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.27. INTER-RELATED AND CUMULATIVE EFFECTS (INCLUDING THE SOUTH DOWNS NATIONAL PARK)

The Applicant's Case

- 3.27.1. ES Chapter 30 [REP6-165] reports on the inter-related effects between each ES chapter. It states that inter-related effects could potentially arise in one of two ways. The first type is the lifetime effect, where multiple phases of the Proposed Development interact to create a potentially more significant effect on a receptor than in one phase alone. The phases for the Proposed Development are construction, operation and maintenance, and decommissioning. The second type of inter-related effect is receptor-led effects. Receptor-led effects are where effects from different environmental aspects combine spatially and temporally on a receptor. These effects may be short-term, temporary, transient, or longer-term.
- 3.27.2. Tables 30-6 through to 30-21 [REP6-165] then discusses in detail the impact type, residual effects from construction, operation and decommissioning and the inter-related assessment from them. Table 30-22 summarises the inter-related effects and concludes that for project lifetime and receptor related effects, the Proposed Development would not have a significant effect in any of the ES topic areas.
- 3.27.3. All of the relevant developments that may be affected by or create cumulative effects of relevance to the Proposed Development have been considered within the CEA which form Appendices 5.3 and 5.4 to the ES [APP-127 and APP-128]. The CEA focuses on other developments in proximity to the Proposed Development which may have effects on the same resources and receptors. It further states that only other developments where an EIA is required are considered appropriate for inclusion in the CEA. The CEA includes other developments that may begin construction, operation or be decommissioned within the same period as the Proposed Development's construction or operation. Defined projects are those that have started construction up to five years prior to publication of the ES, and projects that are deemed likely to go ahead or are going ahead up to 13 years after publication of the ES.
- 3.27.4. For the onshore CEA [APP-127], the search area consists of a 2km buffer around the proposed Order limits, plus the downstream extents of any watercourses that intersect the proposed Order limits to their discharge to sea. Table 1-1 sets out the tiering structure and criteria for screening and assessing other development offshore.
- 3.27.5. The following NSIPs and Transport and Works Act (TWA) schemes were identified [APP-127]:
- A27 Arundel Bypass (now withdrawn).
 - Hampshire Water Transfer and Water Recycling Project (estimated submission July 2025).
 - A27 Worthing and Lancing Improvement (no information).
 - Gatwick Airport Northern Runway extension (in reporting stage).
 - Aquind Interconnector (currently with the Secretary of State awaiting a decision).
 - M25 Junction 10/A3 Wisely Interchange (under construction).
 - Southampton to London Pipeline (under construction).
 - M3 Junction 9 (decision issued, not started).
 - Stonstreet Green Solar (in Pre-Examination stage).
 - Rother Valley Railway TWA (no information).

- 3.27.6. In Tables 2-1 and 3-1 [APP-128], the ES sets a list of wider offshore and onshore developments considered by as part of the cumulative assessment. The offshore works include other OWFs, aggregate works, cabling and telecommunications works. The Onshore includes the list above of other NSIPs and TWA works, plus other identified planning applications being considered under the TCPA1990.
- 3.27.7. The ES [APP-127 and APP-128] identifies no significant cumulative effects from the Proposed Development taken with other known and assessed developments either planned or under construction which would result in any new or materially different significant effects to those identified in each environmental factor chapter of the ES. No mitigation measures further to those set out in the individual environmental factor chapters are required.
- 3.27.8. The effect upon the SDNP is an overarching matter and therefore no specific chapter of the ES made findings on the SDNP taken as a whole. However, the effect upon the SDNP and its Special Qualities were considered within the individual chapters of the ES. At the request of the ExA and in response to ISH1 Action Point 27, the Applicant submitted [REP1-024] a singular document on the effects of the Proposed Development on the Special Qualities of the SDNP including mitigation and enhancement proposals. This document was updated at Deadline 4 [REP4-063].
- 3.27.9. The Applicant set out [REP4-063] an explanation of the effects of the Proposed Development on each of the special qualities of the SDNP together with steps taken by the Applicant, to seek avoid an impact in the first instance or to reduce and minimise the impacts through the embedded environmental measures in line with the mitigation hierarchy. In addition, the Applicant explained how it has sought to further the purposes of the SDNP. The principal areas of effect on the SDNP relate to seascape, landscape and visual, and ecology.
- 3.27.10. In terms of seascape, landscape and visual, whilst the Applicant stated [REP4-063] that harm would be caused to SQ1 “Diverse, inspirational landscapes and breathtaking views” (during construction and operation) and SQ3 “Tranquil and unspoilt places” (during construction), and it considers that such harm does not translate to compromising the statutory purpose of the SDNP. The natural beauty, wildlife and cultural heritage that make up the affected areas and the wider SDNP will remain, and opportunities will still be present for understanding and enjoyment by the public of the special qualities of the SDNP. The Applicant further stated that the Proposed Development would not therefore undermine the statutory purpose of the SDNP or compromise the purposes of its designation.
- 3.27.11. In respect to ecology, the Applicant presented [REP4-063] consideration of potential ecological impacts in relation to the SDNP SQ2: “A rich variety of wildlife and habitats including rare and internationally important species, through:
- Consideration of alternatives.
 - Implementation of the mitigation hierarchy.
 - A commitment to delivering BNG”.
- 3.27.12. The Applicant confirmed [REP4-063] that the Proposed Development would seek to avoid areas of ecological and habitat sensitive sites and woodlands but where unavoidable, would deploy trenchless crossings such as HDD. The Applicant also confirmed that embedded environmental measures have been included in the OCoCP [REP6-224], now secured through Requirement 22 of the Recommended

DCO to avoid areas such as to avoid, minimise or mitigate potential effects to legally protected and notable fauna, irreplaceable habitats, Ancient Woodland, veteran trees and deciduous woodland of principal importance in the SDNP.

- 3.27.13. In terms of furtherance in respect to seascape, landscape and visual, the Applicant proposes a number of measures set out in the National Park Enhancement and Furtherance Principles Document submitted at Deadline 6 [REP-237] which is now secured by Requirement 43 of the Recommended DCO. These matters are discussed in more detail in the relevant sections on seascape, landscape and visual and ecology of this Section.
- 3.27.14. In terms of furthering the wildlife of the SDNP, the Applicant stated [REP4-063] that habitats that support the rich variety of wildlife and internationally important species would be enhanced through the local delivery of BNG secured through Requirement 14 of the draft DCO [REP6-007]. BNG within the context of the SDNPA area alone is presented in [REP6-204].

Examination Issues

- 3.27.15. No IP raised concerns regarding the inter-related effects or the cumulative effects of the Proposed Development taken with other known and assessed developments either planned or under construction. Local Authorities did raise cumulative effects on individual topic areas. For example, Brighton and Hove CC [REP1-041] and SDNPA [REP1049] raised concerns about the cumulative visual effect of the Proposed Development with the Rampion 1 OWF; Arun DC [REP1-039] commented on the potential cumulative noise effects from the Proposed Development with Rampion 1 OWF; Mid Sussex DC [REP1-046] raised comments on the cumulative effects on traffic and air quality; and West Sussex CC noted potential cumulative effects on socio-economics particularly construction workers and a shortage thereof, construction noise and landscape impact. Where required, the ExA discusses those in the individual topic areas.
- 3.27.16. In the written submission at Deadline 3 from the French Secretariat D'Etat Charge de la Mer [REP3-104], it states that two French wind farms, Treport and Fécamp were originally due to be operational by 2023 so would not overlap construction with the Proposed Development. However, those dates are now 2026 and 2024 respectively, so reassessment of cumulative effects with the Proposed Development is required.
- 3.27.17. The Applicant responded at Deadline 4 [REP4-070] stating that the Fécamp wind farm is now fully operational and due to the distance between the Proposed Development and Fécamp, cumulative effects would only be expected to occur if the construction of the two projects were to overlap as the assessments where Fécamp has been scoped in have assumed a worst-case of construction overlap. As such, no update to the cumulative assessments is required. In respect to Treport, the Applicant considered that it had already assessed this within ES Chapter 11 [REP1-004] regarding marine mammals but updated it for Deadline 4 [REP4-020] (updated again at Deadline 5 [REP5-031]) following the information provided by the French Government.
- 3.27.18. Matters concerning discussion on the potential effects of the Proposed Development on the Special Qualities of the SDNP are discussed in the relevant sections of this Recommendation.

ExA's Findings

- 3.27.19. Sections 4.1 and 4.2 of NPS EN-1 2011 includes text on cumulative and inter-related effects. Paragraph 4.1.3 states that in considering any Proposed Development, and in particular weighing its adverse impacts against its benefits, the Secretary of State should take into account potential impacts, including any long-term and cumulative adverse effects as well as any measures to avoid, reduce or compensate for any adverse impacts.
- 3.27.20. Paragraph 4.2.5 then states that when considering cumulative effects, the ES should provide information on how the effects of the Applicant's proposal would combine and interact with the effects of other development (including projects for which consent has been sought or granted, as well as those already in existence). Paragraph 4.2.6 states that the Secretary of State should consider how the accumulation of, and interrelationship between, effects might affect the environment, economy or community as a whole, even though they may be acceptable when considered on an individual basis with mitigation measures in place.
- 3.27.21. NPS EN-1 2024 Paragraph 4.3.3 states, in relation to the environmental effects and considerations, that the EIA Regs require an assessment of the LSE of the proposed project on the environment, covering the direct effects and any indirect, secondary, cumulative, transboundary, short, medium, and long-term, permanent and temporary, positive and negative effects at all stages of the project, and also of the measures envisaged for avoiding or mitigating significant adverse effects. Paragraph 4.3.4 states that to consider the potential effects, including benefits, of a proposal for a project, the Applicant must set out information on the likely significant environmental, social and economic effects of the development, and show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for, following the mitigation hierarchy.
- 3.27.22. Paragraph 4.3.19 states that the Secretary of State should consider how the accumulation of, and interrelationship between, effects might affect the environment, economy, or community as a whole, even though they may be acceptable when considered on an individual basis with mitigation measures in place.
- 3.27.23. The statutory purposes and duty for National Parks are to conserve and enhance the natural beauty, wildlife and cultural heritage of the area and to promote opportunities for the understanding and enjoyment of the Special Qualities of the National Park by the public. The SDNPA also has a duty when carrying out these statutory purposes to seek to foster the economic and social well-being of the local communities within the National Park. In addition, s62 of the Environment Act 1995 also requires all relevant authorities, including statutory undertakers (SUs) and other public bodies to have regard to these purposes.
- 3.27.24. S245 of the Levelling-up and Regeneration Act 2023 (LURA2023) came into effect on 26 December 2023 after the start of the Examination. This amended the National Parks and Access to Countryside Act 1949 s11A (duty to have regard to purposes of National Parks) by the insertion of a new subsection (1A) to provide that in exercising or performing any functions in relation to, or so as to affect, land in any National Park in England, a relevant authority must seek to further the purposes specified in section 5(1) and if it appears that there is a conflict between those purposes, must attach greater weight to the purpose of conserving and enhancing

the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.

- 3.27.25. NPS EN-1 2011 and 2024 include policies for Designated Landscapes. These are set out in the relevant Sections above in this Recommendation. In summary, the Secretary of State must:
- Have regard to the highest status of protection given to the landscape and scenic beauty of National Parks and AONBs as National Landscapes and the specific statutory purposes each of these designated areas has. The conservation of the natural beauty of the landscape and countryside should be given substantial weight in decisions on applications for development consent in these areas.
 - Give substantial weight to the conservation and enhancement of the natural beauty to National Parks and AONBs. The Secretary of State may grant development consent in these areas in exceptional circumstances. Such development should be demonstrated to be in the public interest.
 - Be satisfied that the measures which seek to further purposes of the designation are sufficient, appropriate and proportionate to the type and scale of the development and ensure that any projects consented in these designated areas should be carried out to high environmental standards.
- 3.27.26. The SDLP Core Policy SD3: Major Development provides that planning permission will be refused for major developments in the National Park except in exceptional circumstances, and where it can be demonstrated they are in the public interest. If it is considered that exceptional circumstances exist and development would be in the public interest, all opportunities to conserve and enhance the special qualities should be sought. Development proposals should also be sustainable as measured against the specified factors.
- 3.27.27. SDLP Policy SD5: Design indicates that development proposals will only be permitted where they adopt a landscape-led approach and respect the local character, through sensitive and high-quality design that makes a positive contribution to the overall character and appearance of the area. It sets out the design principles that should be adopted as appropriate. The purpose of Policy SD5 is to ensure that all development is of the highest possible design quality which reflects and respects the exceptional quality of the natural, agricultural and built environment of the National Park.
- 3.27.28. SDLP Policy SD7 states that development proposals in the National Park will only be permitted where they conserve and enhance relative tranquillity.
- 3.27.29. SDLP Policy SD11 indicates that development proposals will be permitted where they conserve and enhance trees, hedgerows and woodlands and a proposed loss of trees, woodland and hedgerows should be avoided, and if demonstrated as being unavoidable, appropriate replacement or compensation will be required. In addition, opportunities should be identified and incorporated for planting of new trees, woodland and hedgerows.
- 3.27.30. SDLP Policy SD42 sets out an overarching approach for infrastructure development in the National Park. It states that development proposals for new or improved infrastructure will only be permitted where, amongst other things, the design minimises the impact on the natural beauty, wildlife and cultural heritage of the National Park and the general amenity of local communities.

- 3.27.31. The SDNP is an International Dark Sky Reserve. The quality of dark night skies is also influenced by what takes place beyond the National Park boundary. Within the SDNP planning policies are in place that seek to conserve and enhance the intrinsic quality of dark night skies. SDLP Policy SD8 states that development proposals will be permitted where they conserve and enhance the intrinsic quality of dark night skies.
- 3.27.32. SDNPA's response at [REP5-143], responding to the Applicant's Deadline 4 response [REP4-063], stated that discussions were ongoing with the Applicant to overcome issues raised by the SDNPA particularly regarding a package of compensation. SDNPA closing statement [REP6-300] confirmed that in respect of:
- Seascape effects - that the Compensation Fund would enable projects to be brought forward that offset the adverse effects on the setting of the National Park.
 - Landscape and Visual effects - that the updated OLEMP and Compensation fund would minimise the harm of the Proposed Development
 - Ecological effects that although consider significant adverse impact on terrestrial ecology within the National Park, the compensation fund will enable the SDNPA to offset some of this harm through delivery of nature recovery projects.
 - Cultural Heritage - that SDNPA remain concerned about the effect upon archaeology however draw some comfort from the Outline WSI and updated Commitment C-225 and Requirement 19 and the Compensation Fund which will enable SDNPA to conserve and enhance cultural heritage.
 - The Public right of way network and South Downs Way - that the compensation fund will provide further opportunities to improve accessibility and users experience and therefore compensate for the residual effect of the Proposed Development.
- 3.27.33. The mitigation and enhancement principles document for the National Park set out a substantial compensation fund of £3,512,400 to be applied towards projects identified capable of compensating for the residual effects of the Proposed Development including:
- Landscape, visual, ecological and cultural heritage effects.
 - Long term landscape and visual effects arising from the construction and operation of the WTG comprising the Proposed Development.
 - Effects on the ability to access and enjoy the National Park through the PRow network and South Downs Way during construction.
 - Conserving, enhancing, and seeking to further National Park purposes.
- 3.27.34. SDNPA in [REP6-254] confirmed that this will enable SNDPA to deliver projects capable of conserving, enhancing and furthering the National Park purposes. SDNPA closing statement [REP6-300] concludes that whilst they remain significantly concerned about the effects upon the National Parks purposes and Special Qualities the mitigation and compensation package enable some of this harm to be offset and will deliver projects capable of conserving and enhancing the National Park.
- 3.27.35. At Deadline 6 the Applicant and the SDNPA submitted a Joint Position Statement [REP6-240] that stated agreement that the National Park Enhancement and Furtherance Scheme would adequately compensate for amongst other things, the significant adverse effects on the SDNP arising in respect of landscape, visual,

ecological and cultural heritage and effects arising from the construction of the onshore cable corridor forming part of the authorised development.

- 3.27.36. The ExA considers that having regard the totality of effects on the SDNP on such areas as seascape, landscape and visual, ecology, tourism and heritage effects caused by the construction, operation and decommissioning, the ExA is satisfied that any significant effects are adequately mitigated for and secured by the Recommended DCO. The Mitigation and Enhancement Principle Document for the National Park is secured by Requirement 43 of the Recommended DCO and provides for a compensation fund that compensates for residual effects of the Proposed Development and conserves, enhances and seeks to further the purposes of the National Park.
- 3.27.37. As no IP raised any substantive concern over the Proposed Development in respect to inter-related and cumulative effects, the ExA is satisfied that the ES has adequately understood and assessed the cumulative and inter-related effects of the Proposed Development. The ExA is satisfied that there would be no significant effects from the Proposed Development taken as a whole and when taken with other known and planned projects. The ExA is satisfied that the policy requirements set out in NPS EN-1 2011 and 2024 are met.

Conclusions

- 3.27.38. While undoubtedly the construction of the Proposed Development would, both taken as a whole and cumulatively with other developments cause some nuisance and disturbance on receptor points, they would be temporary only and limited to a specific time. The ExA therefore concludes that the Applicant has considered the inter-related and cumulative effects as required by NPS EN-1 2011. Accordingly, the ExA is satisfied that the Proposed Development would have no significant either cumulatively with all topic matters, or with other known and planned projects.
- 3.27.39. However, because there are a number of topic areas where a Little Negative weight is attached in the planning balance due to the inevitable construction effects that would occur even accounting for the mitigation and compensation secured in the Recommended DCO, the Proposed Development is considered to cumulatively have a Little Negative weight in the planning balance.
- 3.27.40. The ExA considers the effects of the Proposed Development upon the SDNP, taken as an entity and having regard to all topic areas discussed above in this Section of the Recommendation, to be Major Adverse (Significant) because of the effects of the WTGs.
- 3.27.41. However, the ExA concurs with the Applicant and the SDNPA that the National Park Enhancement and Furtherance Scheme, secured by Requirement 43 of the Recommended DCO, would adequately compensate for amongst other things, the significant adverse effects on the SDNP arising in respect of landscape, visual, ecological and cultural heritage and effects arising from the construction of the onshore cable corridor forming part of the authorised development. The ExA is thus satisfied that the LURA2023 test where proposal must seek to further the purposes of national landscapes, and accordingly the SDNP, has been met.
- 3.27.42. Having regard to the mitigation secured by Requirement 43 of the Recommended DCO and taking into NPS EN-1 2011 on the proportionality of weight to be applied to any harm to landscapes, the ExA considers that the effect of the Proposed

Development upon the SDNP attracts Moderate Negative weight in the planning balance.

- 3.27.43. The Proposed Development would accord with all legislation and policy requirements in respect to inter-related and cumulative effects and upon the local policies of the SDNPA, and the ExA is satisfied that mitigation is adequately provided for and secured in the Recommended DCO.
- 3.27.44. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating inter-related and cumulative, and on the entity of the SDNP. The ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

3.28. OVERALL SUMMARY

- 3.28.1. The ExA has undertaken a thorough Examination of the principal and other issues. We have reached reasoned conclusions on each topic drawn from the evidence before us. The ExA applies the planning balance in Section 5 of this Recommendation following consideration of HRA matters in Section 4 of this Recommendation.

4. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

4.1. INTRODUCTION

4.1.1. This Chapter sets out the ExA's analysis and conclusions relevant to the HRA. This will assist the Secretary of State as the competent authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 ('the Habitats Regulations').

4.1.2. This Section is structured as follows:

- Section 4.2: Findings in relation to Likely Significant Effects on the UK National Site Network and other European sites.
- Section 4.3: Conservation Objectives for sites and features.
- Section 4.4: Findings in relation to Adverse Effects on Integrity.
- Section 4.5: Engaging with HRA Derogations.
- Section 4.6: Consideration of Alternatives.
- Section 4.7: Imperative Reasons of Overriding Public Interest (IROPI).
- Section 4.8: Compensation measures.
- Section 4.9: HRA conclusions.

4.1.3. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s) and no reasonable scientific doubt remains (CJEU Case C-127/02 Waddenzee 7 September 2004).

4.1.4. For the purpose of this report, in line with the Habitats Regulations and relevant Government policy, the term 'European sites' includes Special Areas of Conservation (SAC), candidate SACs, proposed SACs, SPAs, potential SPAs, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.

4.1.5. Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 1 of this Recommendation.

4.1.6. The Proposed Development is also within 30km of a number of MCZs as set out in [APP-040]. MCZ are not included in the designations to be considered under the Habitats Regulations. The implications of the proposals for this designation are discussed in Chapter 3 of this Recommendation.

4.1.7. The ExA has been mindful throughout the Examination of the need to ensure that the Secretary of State has such information as may reasonably be required to carry out their duties as the competent authority. We have sought evidence from the Applicant and the relevant IPs, including NE as the Appropriate Nature Conservation Body (ANCB), through WQs and ISHs.

Report on the Implications for European Sites and Consultation

4.1.8. The ExA produced a Report on the Implications for European Sites (RIES) [PD-014] which compiled, documented, and signposted HRA-relevant information provided in the DCO application and Examination representations up to Deadline 4 (30 June

2024). The RIES was issued to set out ExA understanding on HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on European sites at that point in time.

- 4.1.9. Consultation on the RIES took place between 18 June 2024 and 9 July 2024. Comments were received from the Applicant [REP5-120] at Deadline 5 (9 July 2024) an additional submission was received from NE [AS-022] on 18 July 2024. These comments have been taken into account in the drafting of this Chapter.
- 4.1.10. It is noted that at the point of issue of the RIES, a number of HRA matters remained outstanding and updated advice was subsequently provided by NE on various matters. Furthermore, a number of Examination submissions at Deadline 5 and Deadline 6 included HRA-relevant information. NE [AS-022] advised that it does not consider consultation on the RIES adequately discharges the statutory requirement for the Secretary of State to consult NE on appropriate assessments, as the RIES draws no conclusions on whether Adverse Effects on Integrity (AEoI) can be ruled out for the sites in question. NE advised the RIES be updated before issue to the Secretary of State.
- 4.1.11. In accordance with the Inspectorate's Advice Page 10, the RIES is not revised following consultation and as such the ExA did not republish a revised version. This Chapter considers all HRA representations made by IPs during the Examination, including those made after consultation on the RIES. The ExA notes that regulation 63(3) of the Habitats Regulations requires the competent authority to consult the nature conservation body and have regard to any representations made by that body but does not require the competent authority to specifically consult on the conclusions of any appropriate assessment.
- 4.1.12. The ExA recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the Secretary of State to fulfil their duties of consultation under Regulation 63(3) of the Habitats Regulations and Regulation 28(4) of the Offshore Habitats Regulations, should the Secretary of State wish to do so.

Proposed Development Description and HRA Implications

- 4.1.13. The Proposed Development is described in Chapter 1 of this Recommendation.
- 4.1.14. The spatial relationship between the Order limits of the Proposed Development and European sites is shown in Figure 5-1 and Figures F-1 to F37 of Appendix F of the RIAA [APP-038] updated at Deadline 6 [REP6-115].
- 4.1.15. The Proposed Development is not directly connected with, or necessary to, the management of a European site. Therefore, the Secretary of State must make an 'appropriate assessment' of the implications of the Proposed Development on potentially affected European sites in light of their Conservation Objectives.
- 4.1.16. The Applicant's assessment of effects is presented in the following application documents:
- Report to Inform Appropriate Assessment [APP-038] hereafter referred to as 'the Applicant's RIAA' (updated at Deadline 5 [REP5-025] and Deadline 6 [REP6-115]).

- HRA (without prejudice) Derogation Case [APP-039] (updated at Deadlines 4 and 6) [REP4-014] and [REP6-109].

4.1.17. During the Examination, the Applicant provided the following documents to address comments from the ExA and IPs:

- Appendix 7 – Further Information for Action Point 33 – Kittiwake Implementation and Monitoring Plan [REP1-026] (updated at Deadline 3) [REP3-058] and [REP5-115].
- Appendix 8 – Further Information for Action Point 34 – In Combination Assessment Update for Guillemot and Razorbill [REP1-027] (updated at Deadlines 4 [REP4-065]).
- Guillemot and Razorbill Evidence and Roadmap [REP3-060] (updated at Deadlines 5 and 6) [REP5-117] and [REP6-259].
- Guillemot and Razorbill Implementation and Monitoring Plan (GRIMP) [REP5-127] updated at Deadline 6) [REP6-271].
- Alternative Schedule 17 (on a without prejudice basis) Revision A document [PEPD-017].
- Alternative Schedule 17 (on a without prejudice basis) Revision B document [REP4-016] and updated at Deadline 6 [REP6-111].

4.1.18. During the Examination, the Applicant submitted a change request as described in section 1 of this Recommendation. This change was accepted by the ExA as described in section 1 of this Recommendation. No relevant HRA matters arose from the change request.

Transboundary Matters

4.1.19. Non-UK European sites in EEA States were considered in the Applicant's assessment [APP-038] updated at Deadline 6 [REP6-115]. This is described below and in Section 2.7.

4.1.20. At Deadline 3 a submission was received from the French Secretariat D'Etat Charge de la Mer [REP3-104] raising a concern that certain sites had not been taken into consideration where marine mammals are a qualifying feature. The Applicant responded at Deadline 4 [REP4-070] that it had applied the relevant Seal Management Unit provided by the Special Committee on Seals which indicated there were no SACs for marine mammals which share the same Management Unit with the Proposed Development. The Applicant concluded no LSE on marine mammals with regards to HRA.

4.1.21. The French Secretariat D'Etat Charge de la Mer [REP3-104] also sought clarity on how foraging distances had been taken account of in the screening assessment, particularly in relation to the following five species: fulmar, kittiwake, lesser black backed gull, gannet and herring gull. The Applicant responded at Deadline 4 [REP4-070] confirming that consideration was given to the potential for connectivity and effect on these five species.

Fulmar

4.1.22. The Applicant confirmed at Deadline 4 [REP4-070] that as no LSE were identified for fulmar of French SPAs due to literature sources stating the species was not sensitive to potential effects from offshore wind farms.

Kittiwake

- 4.1.23. The Applicant confirmed at Deadline 4 [REP4-070] that LSE could not be ruled out for the kittiwake feature of the Littoral seino-marin SPA and Falaise du Bessin Occidental SPA, and further assessment had been undertaken as set out in Section 7.5 of the Applicant's RIAA. This concluded that the level of predicted mortality apportioned to either SPA was under one breeding adult (0.33) from either SPA per annum. It was concluded that this level of effect would not affect the achievement of conservation objectives for the SPAs and therefore there would be no adverse effect on the integrity of either SPA, either alone or in-combination.

Lesser black-backed gull

- 4.1.24. The Applicant confirmed at Deadline 4 [REP4-070] that LSE could not be ruled out for the lesser back backed gull feature of the Littoral seino-marin SPA and further assessment was undertaken as set out in Section 7.5 of the Applicant's RIAA. This concluded that the level of predicted mortality apportioned to either SPA was under one breeding bird from either SPA per annum. It was concluded that this level of effect would not affect the achievement of conservation objectives for the SPAs and there would be no adverse effect on the integrity of either SPA from the project alone or in-combination. The RIAA did not consider lesser black backed gull feature of Falaise du Bessin Occidental SPA; however, this species was considered in the Applicant's submission at Deadline 4 [REP4-070].

Gannet

- 4.1.25. The Applicant confirmed at Deadline 4 [REP4-070] that LSE could not be ruled out for the gannet feature of the Cote de Granit Rose-Sept Iles SPA, further assessment was undertaken as set out in Section 7.5 of the Applicant's RIAA. It was concluded that the level of impact was less than a single breeding adult bird per annum. It was concluded that this level of effect would not affect the achievement of conservation objectives for the SPAs and there would be no adverse effect on the integrity of either SPA from the project alone or in-combination.

Herring gull

- 4.1.26. The Applicant confirmed at Deadline 4 [REP4-070] that the Proposed Development is located beyond the mean maximum foraging range of all SPAs where herring gull is a qualifying feature and therefore no connectivity was concluded during the breeding season. During the non-breeding season individuals are not restricted to specific colonies and therefore it is not possible to attribute material effects to a specific SPA. LSE for herring gull of all French SPAs was ruled out.
- 4.1.27. The ExA is satisfied on the basis of the information in relation to the transboundary sites and qualifying features discussed above, that LSE can be excluded.

4.2. FINDINGS IN RELATION TO LSE

- 4.2.1. Under Regulation 63 of the Habitats Regulations and Regulation 28 of the Offshore Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an 'appropriate assessment' (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.

- 4.2.2. The European sites and qualifying features that were considered in the Applicant's assessment of LSE are presented in the HRA Screening matrices - Appendix E of the RIAA [APP-038] updated at Deadline 6 [REP6-115]. The Applicant's RIAA sets out the methodology applied to determining what would constitute a 'significant effect' and considered the pathways for effects on qualifying features of sites.
- 4.2.3. Section 3 of the Applicant's RIAA explains that the MDS (worst-case) has been applied to the RIAA and that topic specific MDSs used for relevant aspect chapters of the ES have been applied to the screening exercise.
- 4.2.4. Section 5 of the RIAA presents the HRA Screening Assessment which sets out the broad approach undertaken to the approach for screening for LSE. The selection process to identify relevant European sites and qualifying features is then described in further detail using the relevant impact pathway/receptor type.
- 4.2.5. The Applicant's RIAA explains that sites for which marine mammals are a qualifying feature were screened out during the screening exercise. This was because there were no SACs identified where seal species are a qualifying feature, which share the management unit of the Proposed Development. NE set out agreement with this approach in its RR [RR-265].
- 4.2.6. Screening matrices for the sites included in the screening assessment are set out in Matrices 1-106 of Appendix E [APP-038] updated at Deadline 6 [REP6-115].
- 4.2.7. The Applicant's conclusions in respect of screening are presented in Section 5.16 of the Applicant's RIAA.
- 4.2.8. No matters were raised in the Examination in relation to the Applicant's screening assessment.

LSE from the Proposed Development Alone

- 4.2.9. The Applicant identified potential impacts of the Proposed Development considered to have the potential to result in LSE from the Proposed Development alone in Section 5 of the Applicant's RIAA [APP-038] updated at Deadline 6 [REP6-115].
- 4.2.10. The impacts considered by the Applicant to have the potential to result in LSE are set out in Table 5.2 of the RIAA and listed as follows:
- Land take/ land cover change of functionally linked land (FLL) during construction and decommissioning.
 - Noise and vibration during construction and decommissioning.
 - Fragmentation of habitats during construction and decommissioning.
 - pollution effects during construction and decommissioning.
 - Spread of non-native species during construction and decommissioning.
 - Water neutrality during operation and maintenance.
 - Collision risk for birds during operation.
 - Collision risk for birds during migration during operation.
 - Collision risk for birds during breeding season – during operation.
 - Increased light levels during construction and decommissioning.
 - Underwater noise during construction and decommissioning.
 - Suspended sediment/deposition -all phases.
 - Marine invasive and non-native species during construction and decommissioning.

- Pollution – all phases.
- Disturbance and displacement for birds – all phases.
- Barrier effects for birds during operation.

4.2.11. The potential for LSE to result from the Proposed Development acting alone was identified at Stage One screening for 37 European sites. The location of UK sites relative to the Proposed Development which were considered to have LSE are depicted on Figure 5-1 of the Applicant's RIAA. The location of individual European sites, including those not located in the UK, in relation to the Proposed Development are shown on Figures F-1 to F-37 of Appendix F: European sites information [APP-038] updated at Deadline 6 [REP6-115].

4.2.12. The Applicant's RIAA concluded no LSE from the Proposed Development alone on the qualifying features of those sites listed in Table 10.1 of the Applicant's RIAA.

LSE from the Proposed Development In Combination

4.2.13. The Applicant addressed potential in-combination effects arising from the Proposed Development within Section 5.10 to 5.15 of the RIAA [APP-038] updated at Deadline 6 [REP6-115] which sets out the methodology applied. The sites identified with potential for LSE in combination (LSEI) with other plans or projects are presented in the screening matrices at Appendix E [APP-038] updated at Deadline 6 [REP6-115]. The Applicant describes in the RIAA [APP-038] that where potential for LSE has been identified alone, then the potential for in-combination effects should also be considered.

4.2.14. The RIAA states that the LSEI assessment has used information documented in ES Appendix 5.4: CEA shortlisted developments [APP-128]. Projects and plans considered for the in-combination assessment are set out in Table 2.1: shortlisted other development (offshore) and Table 3- 1: shortlisted other developments (onshore). The projects and plan considered are also presented on Figures 5.4.1, 5.4.2, 5.4.3a – 5.4.3c and 5.4.4a [APP-128].

4.2.15. No additional plans or projects were identified by IP's in the Examination.

4.2.16. With regards to marine mammals, the Applicant's RIAA states that as no LSE were identified for marine mammals, any pathways for effect would be so weak that LSEI were also not identified. This was not disputed by any IPs.

LSE Assessment Outcomes

4.2.17. The sites for which the Applicant concluded no LSE would occur from either the project alone or in combination with other projects and plans are presented in the Screening Matrices at Appendix E and Table 10.1 of the Applicant's RIAA [APP-038] updated at Deadline 6 [REP6-115].

4.2.18. No matters were raised in the Examination in relation to the Applicant's screening assessment.

4.2.19. The ExA is satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site have been assessed and is satisfied with the approach to the assessment of alone and in-combination LSE.

4.2.20. Taking into account the reasoning set out above, the ExA considers that the Proposed Development is likely to have a significant effect on the qualifying features

of the European sites identified in Table B when considered alone, or in combination with other plans or projects. This was not disputed by IPs/NE during the Examination.

Table B - European sites and features for which LSE could not be excluded.

European site	Qualifying Feature(s)
Arun Valley Ramsar	- Northern Pintail. - Assemblage of wintering waterfowl.
Arun Valley SPA	- Bewick's swan. - Assemblage of wintering waterfowl.
Arun Valley SAC	Ramshorn snail.
Pagham Harbour Ramsar	- Dark bellied brent goose. - Common tern.
Pagham Harbour SPA	- Dark bellied brent goose. - Common tern. - Ruff.
Portsmouth Harbour Ramsar	Dark bellied brent goose.
Portsmouth Harbour SPA	- Black tailed godwit. - Dark bellied brent goose. - Dunlin. - Red breasted merganser.
The Mens SAC	Barbastelle bat.
River Itchen SAC	Atlantic salmon.
Solent Maritime SAC	Estuarine habitats.
Solent and Isle of Wight lagoons SAC	Coastal lagoons.
South Wight Maritime SAC	- Reefs. - Submerged/partially submerged sea Caves.
Alde-Ore Estuary Ramsar	Lesser black backed gull.
Alde-Ore Estuary SPA	Sandwich tern.

European site	Qualifying Feature(s)
Alderney West Coast and Burhou Islands Ramsar	Gannet.
Breydon Water SPA	Common tern.
Chichester and Langstone Harbours SPA	- Bar tailed godwit. - Bark bellied brent goose. - Dunlin. - Grey plover. - Pintail. - Red breasted merganser. - Redshank. - Ringed plover. - Sanderling. - Shelduck. - Shoveler. - Teal. - Turnstone. - Wigeon. - Waterbird assemblage.
	Common tern.
	Sandwich tern.
Chichester and Langstone Harbours Ramsar	- Ringed plover. - Black tailed godwit. - Redshank. - Dark bellied brent goose. - Shelduck. - Grey plover. - Dunlin. - Waterbird assemblage.
Coquet Island SPA	- Sandwich tern. - Arctic tern. - Common tern.
	- Herring gull. - Lesser black backed gull. - Kittiwake.
Cote de Granit Rose-Sept Iles SPA	Gannet.
Dungeness, Romney Marsh and Rye Bay SPA	Sandwich tern.
	Common tern.
Falaise du Bessin Occidental SPA	Kittiwake.
Farne Islands SPA	- Common tern. - Arctic tern.

European site	Qualifying Feature(s)
	Sandwich tern.
	Kittiwake.
	Guillemot.
Flamborough and Filey Coast (FFC) SPA	Gannet.
	- Guillemot. - Razorbill.
	- Kittiwake. - Herring gull.
Foulness (Mid Sussex Coast Phase 5) SPA	- Common tern. - Sandwich tern.
Grassholm SPA	Gannet.
Greater Wash SPA	- Common tern. - Sandwich tern.
Littoral seino-marin SPA	- Lesser black backed gull. - Kittiwake.
Medway Estuary and Marshes SPA	Common tern.
North Norfolk Coast Ramsar	- Sandwich tern. - Common tern.
North Norfolk Coast SPA	- Sandwich tern. - Common tern.
Northumbria Coast Ramsar	Arctic tern.
Northumbria Coast SPA	Arctic tern.
Solent and Dorset Coast SPA	- Common tern. - Little tern.
	Sandwich tern.

European site	Qualifying Feature(s)
Solent and Southampton Water Ramsar	▪ Ringed plover. ▪ Dark bellied brent goose. ▪ Teal. ▪ Black tailed godwit. ▪ Waterbird assemblage.
Solent and Southampton Water SPA	▪ Black tailed godwit. ▪ Dark bellied brent goose. ▪ Ringed plover. ▪ Teal. ▪ Waterbird assemblage.
	▪ Sandwich tern.
The Wash SPA	▪ Common tern.

4.3. CONSERVATION OBJECTIVES

4.3.1. The conservation objectives for the sites and features where LSE was identified are presented in Appendix F of the Applicant's RIAA [APP-038] updated at Deadline 6 [REP6-115].

4.3.2. Although the conservation objectives for the European sites were included, the RIAA does not include information on the condition of the sites. Question 2 of the RIES asked the Applicant to identify any European sites affected by the Proposed Development which are in unfavourable condition (including unfavourable recovering). In their response to the consultation on the RIES, the Applicant [REP5-120] identified sites which are in unfavourable declining condition, as listed in Table C:

Table C - European sites in unfavourable declining condition.

European Site	Qualifying Feature
Arun Valley Ramsar	• Northern pintail.
Arun Valley SPA	• Bewick's swan.
Arun Valley SAC	• Ramshorn snail.
Pagham Harbour SPA	• Common tern • Ruff
Portsmouth Harbour SPA	• Dunlin • Red breasted merganser
Chichester and Langstone Harbours SPA	• Dunlin • Sanderling

European Site	Qualifying Feature
	Shelduck
Chichester and Langstone Harbours Ramsar	- Shelduck - Dunlin
North Norfolk Coast SPA	Common tern
North Norfolk Coast Ramsar	Common tern
FFC SPA	Kittiwake

4.3.3. The Applicant also identified the following sites (Table D) as being affected by the Proposed Development which are in an unfavourable no change condition.

Table D - European Sites in unfavourable no change condition

European Site	Qualifying Feature(s)
Portsmouth Harbour SPA	Dark bellied brent goose.
Portsmouth Harbour Ramsar	Dark bellied brent goose.
River Itchen	Atlantic salmon.
Solent Maritime SAC	- Sandbanks which are slightly covered by sea water all the time. - Mudflats and sandflats not covered by seawater at low tide. - Estuaries.
Foulness (Mid Essex Coast Phase SPA)	- Sandwich tern. - Common tern.

4.3.4. The Applicant identified the following sites (Table E) as being affected by the Proposed Development which are in an unfavourable recovering condition.

Table E - European Sites in unfavourable recovering condition.

European Site	Qualifying Feature(s)
Portsmouth Harbour SPA	Black tailed godwit.
Chichester and Langstone Harbours SPA	- Common tern. - Sandwich tern.
Solent and Southampton Water SPA	- Black tailed godwit. - Ringed plover. - Teal. - Dark bellied brent goose
Solent and Southampton Water Ramsar	- Black tailed godwit. - Teal.

European Site	Qualifying Feature(s)
	• Dark bellied brent goose.
Farne Islands SPA	• Arctic tern. • Common tern. • Sandwich tern. • Kittiwake. • Guillemot.

- 4.3.5. The Applicant also included a list of sites where the conservation status of a feature is not currently available. The UK sites where the conservation status is unknown are shown in Table F below.

Table F - European sites (UK) where conservation status is unknown.

European Site	Qualifying feature(s)
Chichester and Langstone Harbours Ramsar	• Ringed plover.
Solent and Dorset Coast SPA	• Sandwich tern. • Common tern.
Solent and Southampton Water Ramsar	• Ringed plover.
Medway Estuary and Marshes SPA	• Common tern.
Breydon Water SPA	• Common tern.
Greater Wash SPA	• Common tern. • Sandwich tern.
FFC SPA	• Herring gull.
Northumbria Coast SPA	• Arctic tern.
Northumbria Coast Ramsar	• Arctic tern.
Coquet Island SPA	• Herring gull. • Lesser black backed gull. • Kittiwake.
Alderney West Coast and Burhou Islands Ramsar	• Gannet.

- 4.3.6. The ExA is satisfied that the Secretary of State has access to the correct Conservation Objectives for use in an appropriate assessment of the Proposed Development.

4.4. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEol)

4.4.1. The European sites and qualifying features identified in Table B above were further assessed by the Applicant to determine if they could be subject to AEol from the Proposed Development, either alone or in combination with other plans or projects. The assessment of AEol was made in light of the conservation objectives for the European sites [APP-038] updated at Deadline 6 [REP6-115]. The Applicant's approach to the in-combination assessment is set out in Section 8 of the RIAA [APP-038] updated at Deadline 6 [REP6-115]. The potential for LSEI with other plans and projects is presented in Appendix F and discussed in detail in Section 8 of the Applicant's RIAA [APP-038] updated at Deadline 6 [REP6-115].

4.4.2. Based on the findings of the Examination, the ExA is satisfied that an assessment of AEol from the Proposed Development in combination with other plans or projects can be based on this information and that no other plans or projects are required to be taken into account.

Mitigation measures

4.4.3. Section 6 and 7 of the Applicant's RIAA identified both embedded and additional mitigation measures which would be secured through either DCO requirements, DML conditions or the Code of Construction Practise. Section 6 of the Applicant's RIAA confirms that mitigation measures were not taken into account during the screening stage but were taken into account in the Applicant's assessment of effects on integrity.

4.4.4. The potential for mitigation measures to be required in order to achieve water neutrality for the Arun Valley designated sites was discussed throughout the Examination. This is set out in detail in Section 4.4.7 below.

Sites for which the Applicant concluded AEol can be excluded

4.4.5. The Applicant's RIAA [APP-038] updated at Deadline 6 [REP6-115] concluded that the Proposed Development would not adversely affect the integrity of any of the European sites and features for which a LSE pathway was identified (see Table G), either alone or in-combination with other projects or plans. The Applicant's conclusion of no AEol was not disputed in respect of the following European sites:

Table G – Excluded sites for AEol

European Site	Qualifying feature	Impact pathway
The Mens SAC	barbastelle bat.	land take/ cover change.
Pagham Harbour Ramsar	dark bellied brent goose.	collision risk.
Pagham Harbour SPA	- dark bellied brent goose; - common tern; and - ruff.	collision risk.
Portsmouth Harbour SPA	- dark bellied brent goose; - black tailed godwit; - dunlin; and - red breasted merganser.	collision risk.

European Site	Qualifying feature	Impact pathway
Portsmouth Harbour Ramsar	dark bellied brent goose.	collision risk.
South Wight Maritime SAC	- submerged or partially submerged sea caves; and - reefs.	- marine invasive non-native species (MINNS); - physical processes; - pollution; and - suspended sediments.
Solent Maritime SAC	- estuaries; - Atlantic salt meadows and other annuals colonising mud and sand; - mudflats and sandflats not covered by seawater at low tide; - coastal lagoons; and - sandbanks slightly covered by sea water all the time.	- suspended sediment and deposition; and - MINNS.
Solent and Isle of Wight Lagoons SAC	coastal lagoons.	- suspended sediment and deposition; - MINNS; - physical processes; and - pollution.
Dungeness, Romney Marsh and Rye Bay SPA	- common tern; and - sandwich tern.	collision risk.
	sandwich tern.	disturbance/displacement.
Chichester and Langstone Harbours SPA	- common tern; and - sandwich tern.	collision risk.
	sandwich tern.	disturbance/displacement.
	- bar tailed godwit; - curlew; - dark bellied brent goose; - dunlin; - grey plover; - pintail; - red breasted merganser; - redshank; - ringed plover; - sanderling; - shelduck; - shoveler; - teal; - turnstone; - wigeon; and - waterbird assemblage.	collision risk on migration.
Chichester and Langstone Harbours Ramsar	- ringed plover; - black tailed godwit; - redshank; - dark bellied brent goose; - shelduck; - grey plover;	collision risk on migration.

European Site	Qualifying feature	Impact pathway
	- dunlin; and - waterbird assemblage.	
Solent and Southampton water SPA	- sandwich tern; - black tailed godwit; - dark bellied brent goose; - ringed plover; - teal; and - waterbird assemblage.	collision risk on migration.
Solent and Southampton Water Ramsar	- black tailed godwit; - dark bellied brent goose; - ringed plover; - teal; and - waterbird assemblage.	collision risk on migration.
Medway Estuary and Marshes SPA	common tern.	collision risk on migration.
Foulness (Mid Essex Coast) Phase 5 SPA	- common tern; and - sandwich tern.	collision risk.
Alde-Ore Estuary SPA	- sandwich tern; and - lesser black backed gull.	collision risk.
Alde-Ore Estuary Ramsar	- sandwich tern; and - lesser black backed gull.	collision risk.
The Wash SPA	common tern.	collision risk.
Breydon Water SPA	common tern.	collision risk on migration.
Greater Wash SPA	- common tern; and - sandwich tern.	collision risk on migration.
North Norfolk Coast SPA	- common tern; and - sandwich tern.	collision risk.
North Norfolk Coast Ramsar	- common tern; and - sandwich tern.	collision risk.
Alderney West Coast and Burhou Islands Ramsar	gannet.	- collision risk; and - disturbance/ displacement.
Grassholm SPA	gannet.	collision risk.
Northumbria Coast SPA	Arctic tern.	collision risk.
Northumbria Coast Ramsar	Arctic tern.	collision risk.
Solent and Dorset Coast SPA	- common tern - sandwich tern - little tern	disturbance/ displacement.
Coquet Island SPA	- sandwich tern; - Arctic tern; - common tern; - herring gull; - lesser black backed gull; and - kittiwake.	collision risk.
Cote de Granit Rose Sept Iles SPA	gannet.	- collision risk - disturbance/displacement
Falaise du Bessin Occidental SPA	kittiwake	collision risk

European Site	Qualifying feature	Impact pathway
Littoral seino-marin SPA	• lesser black-backed gull • kittiwake	• collision risk

4.4.6. The ExA is satisfied on the basis of the information above that AEol on all these sites and their qualifying features can be excluded. The complete details of these sites is provided in Table 10.1 of the Applicant's RIAA [APP-038] updated at Deadline 6 [REP6-115].

4.4.7. The Applicant also concluded no AEol alone or in-combination for the following sites and qualifying features:

- River Itchen SAC – Atlantic salmon.
- Solent and Dorset Coast SPA – common tern, little tern, sandwich tern.
- Arun Valley SPA – water neutrality.
- Arun Valley SAC – water neutrality.
- Arun Valley Ramsar – water neutrality and northern pintail.
- FFC SPA – herring gull, kittiwake, guillemot and razorbill.
- Farne Islands SPA – guillemot.

4.4.8. Several of the Applicant's conclusions of no AEol in relation to these Europeans sites and their qualifying features were disputed by IPs and were discussed throughout the Examination. The account of the matters discussed is set out in the following sections.

River Itchen SAC – Atlantic salmon

4.4.9. In its RR [RR-265], NE commented that it would be likely to agree with the conclusions of the Applicant but raised the following points:

- NE disagreed with the detail of Table 7.1 of the Applicant's RIAA [APP-038] updated at Deadline 6 [REP6-115] that fish are considered as a fleeing receptor.
- NE considered it would be more accurate to show noise modelling location closest to the SAC and requested that clarity was provided on which of the worst-case scenario the figure is showing.
- NE advised that Figure 7-1 should show the full range of stationary noise effects.

4.4.10. Q4 of the RIES requested that the Applicant provided an update regarding the requests from NE. The Applicant responded to these points at Deadline 5 [REP5-120]. The Applicant considers it is appropriate to use a fleeing receptor approach for Atlantic salmon as they are not spatially restricted to piling areas. To support its position, the Applicant provided a number of data sources which explain how far and fast Atlantic salmon can swim, and how they respond to noise. The Applicant stated that to assess Atlantic salmon as a stationary receptor would be over precautionary and could overestimate the potential for LSE.

4.4.11. The Applicant updated Table 7-1 and Figure 7-1 in the RIAA at Deadline 5 [REP5-025] to include the information requested by NE. The Applicant updated the impact ranges of a fleeing receptor for the simultaneous piling scenario for monopile and multileg foundations as shown in Figures 7-1a and 7-1b of the RIAA submitted at Deadline 5 [REP5-025]. The Applicant also presented the impact range contours for a stationary receptor in Appendix J of the RIAA updated at Deadline 5. In conclusion the Applicant considered there would be no AEol of the Atlantic salmon feature of

the River Itchen SAC resulting from mortality and injurious effects directly associated with underwater noise from the Proposed Development.

- 4.4.12. The ExA notes that NE stated in its RR [RR-265] that it would be likely to agree with the conclusions of the Applicant, but that it requested additional assessment of effects on Atlantic salmon. The ExA considers that the updates provided by the Applicant in [REP5-025] adequately respond to those requests. Furthermore, the SoCG between the Applicant and NE submitted at Deadline 5 [REP5-097] shows the status of this matter as agreed.
- 4.4.13. The ExA has found that an AEoI from the Proposed Development alone or in-combination can be excluded beyond reasonable scientific doubt for River Itchen SAC.

Solent and Dorset Coast SPA – common tern, little tern and sandwich tern.

- 4.4.14. In its RR [RR-265], NE stated that it did not disagree with the assessment undertaken but considered that herring and sandeel should both be considered as prey species for tern species, rather than only sandeel.
- 4.4.15. Q5 of the RIES asked NE whether they considered that the Applicant should update the RIAA to reflect the comment raised regarding prey species. NE did not provide a response to this question. NE did not confirm by the end of the Examination if it considers this matter to now be resolved.
- 4.4.16. No issues regarding the common tern, little tern and sandwich tern features of the Solent and Dorset Coast SPA were pursued in the Examination. Although no final position from NE was received on this point, the ExA considers that inclusion of herring and sandeel would not alter the conclusion of no AEoI for this site. The ExA concurs with the Applicant's conclusion of no AEoI alone or in-combination for the Solent and Dorset Coast SPA.

Arun Valley SAC, SPA and Ramsar site – water neutrality

- 4.4.17. In the RIAA, the Applicant considered that AEoI on all the Arun Valley designated sites from water neutrality could be ruled out as mitigation measures could be provided which would result in no additional water abstraction. However, in its RR [RR-265] and Principal Areas of Disagreement Statement [AS-011], NE requested that an assessment of water neutrality should be undertaken to demonstrate water neutrality could be achieved.
- 4.4.18. At Deadline 3, the Applicant [REP3-051] confirmed no mains water would be required from the Sussex North Water Resource Zone as water for the Proposed Development would be imported to site via tanker or dispensers. The Applicant proposed a new commitment (C-290) which would be secured by Requirement (5) CoCP [REP3-050] to secure this mitigation measure. However, during ISH2 [REP4-072], the Applicant informed the Examination that it had met with Horsham DC who advised that due to numbers of proposed housing being reduced from 1000 to 400 dwellings, there was headroom of water capacity which Horsham DC considered could be used by the Proposed Development.
- 4.4.19. At Deadline 5 the Applicant submitted an updated RIAA [REP5-025] which set out agreement between NE and Horsham DC that there was sufficient headroom

available for water supply for the Proposed Development during the construction phase. Commitment (C-290) was removed from the OCoCP.

- 4.4.20. Consideration is given to the use of water during the operation and maintenance phase in the updated RIAA [REP5-025]. The RIAA explains that local authorities within the Sussex North Water Supply Zone are working towards the delivery of a strategic offsetting scheme which would enable developers to make a financial contribution based on predicted water usage, in order to deliver necessary water use reductions. The Applicant stated that if the offsetting scheme is in place at the time of commissioning, then a financial contribution would be provided. In the event that the offsetting scheme is not available at the time of commissioning, a range of strategic measures would be included, i.e. reduction of potential water at the substation as per commitment C-260 which would be secured by DCO Schedule 1, Part 3, Requirement 8, Detailed design approval onshore substation (2).
- 4.4.21. NE confirmed in its SoCG [REP5-140] that it considered an AEoI on the Arun Valley designated sites could be ruled out for the construction phase and considered this matter closed. With regards to the operational phase, NE notes that the Applicant has considered offsetting any water usage via the Sussex North Offsetting Water Scheme (SNOWS) which is being developed by affected local authorities. NE stated that mitigation via SNOWS is an appropriate means of achieving water neutrality during the operational phase.
- 4.4.22. The PADS from NE submitted at Deadline 6 [REP6-295] confirmed that NE consider that this issue is now resolved.
- 4.4.23. The ExA notes that NE considers this matter to be resolved and has no reason to disagree with the conclusions of the Applicant or NE. The ExA agrees that AEoI relating to water neutrality can be ruled out for the Arun Valley designated sites both alone and in-combination.

Arun Valley Ramsar site – Northern pintail

- 4.4.24. In its RIAA [APP-038] the Applicant concluded there would be no AEoI to Northern pintail feature of the Arun Valley Ramsar site from loss of FLL during construction, alone or in-combination with other plans and projects. In its RR [RR-265] NE requested further clarity on how impacts on FLL had been assessed as it was not clear if embedded mitigation measures have underestimated the length of time that it would take to reinstate the FLL back to previous condition and agricultural use. NE also sought clarity on how the foraging range of Northern pintail had been estimated.
- 4.4.25. This matter was discussed during ISH2 [EV5-005] where the Applicant confirmed the location of land which is potentially FLL and explained that it does not consider this area of land would be used by Northern pintail as it does not consist of suitable habitat.
- 4.4.26. In response to questions in the RIES, the Applicant [REP5-120] provided a map showing the FLL of the Arun Valley Ramsar in Appendix A. It explained that following a meeting between the Applicant and NE on 27 June 2024, there were no outstanding concerns regarding FLL for Northern pintail. In the Risk and Issues Log submitted at Deadline 6 [REP6-296], NE stated that it was content that the land in question did not appear to be FLL and considered this matter to be resolved.

- 4.4.27. RIES Q9 asked NE to clarify the status of Northern pintail in the Ramsar site as it was noted that it is listed as a feature for possible future inclusion rather than being a confirmed feature. NE were also asked to confirm if Northern pintail is part of the waterbird assemblage that is one of the features of the Arun Valley SPA. NE responded [AS-022] confirming that Northern pintail is not a feature of the Arun Valley SPA and Ramsar site but is considered one of the main components of the waterbird assemblage. The PADS from NE submitted at Deadline 6 [REP6-295] confirms that NE consider that this issue is now resolved.
- 4.4.28. The ExA has no reason to disagree with the reasoning and positions of the Applicant and NE. The ExA agrees with the conclusion that an AEol can be ruled out for the above site both alone and in-combination.

FFC SPA – herring gull

- 4.4.29. The Applicant's RIAA concludes no adverse effects on the herring gull feature of FFC SPA. RIES Question 3 asked NE to confirm if it agreed with the conclusions of the Applicant regarding the herring gull feature of the FFC SPA. In its response NE, [AS-022] confirmed that herring gull is a component of the FFC SPA breeding bird assemblage feature rather than a qualifying feature in its own right. NE confirmed it agrees that predicted impacts on herring gull would not adversely affect the AEol.
- 4.4.30. No issues regarding the herring gull feature were pursued in the Examination regarding the FFC SPA. The ExA notes the content of the submission from NE [AS-022] confirming it agrees that impacts on herring gull would not adversely affect the AEol of FFC SPA.
- 4.4.31. The ExA has no reason to disagree with the position of the Applicant and NE. The ExA agrees that impacts to herring gull would not adversely affect the integrity of FFC SPA both alone or in-combination.

FFC SPA – kittiwake

- 4.4.32. Matters relating to kittiwake were subject to further questioning and discussion in the Examination. In the RIAA [APP-038] updated at Deadline 6 [REP6-115] it was explained that the Applicant was aware of recent decisions by the Secretary of State that there was potential for AEol for the kittiwake feature of FFC SPA resulting from East Anglia One North and East Anglia Two, in relation to cumulative effects. The Applicant explained that the latest in-combinations totals used in its assessment were those suggested by NE at Deadline 2 of the Examination for the Sheringham and Dudgeon Extension Project. The values presented for the Sheringham and Dudgeon Extension were updated for the Proposed Development and included additional values from the Green Volt floating offshore wind farm. The results of following this approach provide the following outcomes:
- Total collision risk from projects in-combination with kittiwake apportioned to FFC SPA – 174.5 birds in the breeding season.
 - 58 birds in the post breeding migration bio season.
 - 61.0 birds in the return migration bio-season.
- 4.4.33. This gives a total of 293.4 birds. The Applicant stated that its assessment had identified that under one adult bird (0.72) apportioned to FFC SPA would be subject to mortality through collision, as set out in Table 7-8 of the RIAA [APP-038] updated at Deadline 6 [REP6-115]. This Applicant concluded that the contribution from the Proposed Development of 0.72 birds per annum represents a very small

contribution to the in-combination total (0.25%) and this figure is so small that it would not materially affect the overall effect.

- 4.4.34. The Applicant concluded no AEol for the kittiwake feature with regards to collision risk during breeding season alone or in-combination as it considers this number would not be detectable to the overall baseline for natural mortality of kittiwake.
- 4.4.35. Notwithstanding the conclusion reached by the Applicant of no AEol of the kittiwake feature of the FFC SPA from the Proposed Development in-combination with other projects, the Applicant provided a without prejudice derogation case for these species with its application for in-combination effects [APP-039] updated at Deadline 6 [REP6-109], in the event that the Secretary of State were not to reach the same conclusion.
- 4.4.36. In its RR, NE [RR-265] disagreed with the conclusions of the Applicant, that the contribution of the Proposed Development to the in-combination assessment of collision risk to kittiwake feature of FFC SPA is so small that it is of no consequence. NE stated that in-combination impacts had already reached a level where AEol could not be ruled out prior to the decision for the Hornsea 3 OWF. NE stated that AEol could not be excluded for FFC SPA in relation to the kittiwake feature. NE suggested that further discussion was held with the Applicant to define and agree an appropriate compensation package for the kittiwake feature of FFC SPA. The position of NE was also reiterated in its PADS [AS-011].
- 4.4.37. The Kittiwake Implementation and Monitoring Plan (KIMP) was submitted to the Examination at Deadline 1 [REP1-026] (updated at Deadline 3 [REP3-58] and Deadline 5 [REP5-115]. This includes potential compensation measures which are reflected in the Habitats Regulation Assessment (without prejudice) [APP-039] (updated at Deadline 4 [REP4-014] and Deadline 6 [REP6-109]. Potential compensation measures are considered fully in Section 4.8 of this chapter.
- 4.4.38. The PADS from NE submitted at Deadline 6 [REP6-295] maintain its position that AEol cannot be ruled out for the Proposed Development in-combination with other projects.
- 4.4.39. For impacts in-combination with other plans and projects, the Applicant concluded no AEol for the kittiwake feature of FFC SPA, but this was disputed by NE who maintained this position at the close of Examination.
- 4.4.40. The ExA agrees with NE that it is not possible to exclude AEol from in-combination collision risk for kittiwake as it has not seen sufficient robust evidence that would bring into doubt NE's position on this as the SNCB.

FFC SPA – guillemot and razorbill

- 4.4.41. During the Examination, matters relating to guillemot and razorbill were the subject of further questioning and discussion. The Applicant's RIAA [APP-038] updated at Deadline 6 [REP6-115] concluded that an AEol could be excluded for the guillemot and razorbill features of the SPA with regards to disturbance/displacement during the non-breeding season both alone and in-combination with other plans or projects. It stated that direct impacts from disturbance/displacement during the non-breeding season in the operational phase would result in the mortality of less than two (1.26) guillemot and approximately one (1.23) razorbill adult birds attributable to FFC SPA

per annum (as set out in Table 7-10) of the RIAA [APP-038] and updated as Table 7-11 in [REP6-115].

- 4.4.42. NE disagreed with the conclusions of the Applicant. In its RR [RR-265] NE stated that it had previously advised the Hornsea Four Examination that AEol could not be ruled out for guillemot and razorbill and considered that there would be an AEol in-combination with other plans and projects. NE considered that the Applicant should undertake a full in-combination assessment for these two qualifying features of FFC SPA along with other plans and projects.
- 4.4.43. At Deadline 1, the Applicant submitted an In-Combination Update for Guillemot and Razorbill [REP1-027]. This suggests that both guillemot and razorbill colonies at FFC SPA have strong resilience to any change such as potential displacement effect. It considers that the integrity of both auk features at FFC SPA would be maintained and there would be no AEol through in-combination impacts to FFC SPA.
- 4.4.44. The Applicant's in-combination assessment [REP1-027] included analysis of population viability for both species under multiple scenarios. The in-combination assessment was assessed based on projects with a mean max plus one standard deviation foraging distance from the colony during the breeding season. Two foraging ranges were considered, the first includes data from the colony of guillemot and razorbill at the Fair Isles and the second excludes this data, resulting in a shorter foraging range. The Applicant considered that use of the foraging range data which excludes the Fair Isle data was the most appropriate.
- 4.4.45. NE responded to this document at Deadline 3 [REP3-080] stating that the effect of using the shorter foraging range is to eliminate the connectivity in the breeding season between FFC SPA and consented projects which have relatively high impacts, such as the Dogger Bank and Hornsea One and Hornsea Two OWFs. NE considered the standard foraging ranges should be used for the in-combination assessment.
- 4.4.46. The Guillemot and Razorbill Evidence Roadmap [REP3-060] considered the preferred approach of the Applicant; 50% displacement and 1% mortality as well as the preferred range of NE of 30-70% displacement and 1-10% mortality rate for auk species. Assessments for 70% displacement and 2% or 5% mortality have also been considered. The Applicant pointed out in the updated Guillemot and Razorbill Evidence Roadmap [REP5-117] that the value of 70% displacement and 2% mortality was agreed by the Secretary of State as appropriate for Hornsea Four and East Anglia One North OWFs.
- 4.4.47. NE commented [REP3-080] that the Applicant's preferred approach is for use of the lower displacement and mortality rates, however it has presented the figures which were considered appropriate by NE.
- 4.4.48. In its Deadline 3 response, NE [REP3-080] stated that even though the anticipated contribution to the in-combination effect on guillemot and razorbill would be a modest one, it considered that this would result in AEol to FFC SPA.
- 4.4.49. The Guillemot and Razorbill Evidence and Roadmap (on a without prejudice basis) [REP3-060] (updated at Deadline 5 [REP5-117] and Deadline 6 [REP6-259] included potential compensation measures. The HRA (without prejudice) [APP-039] originally submitted with the Applicant in relation to kittiwake was updated to include

'Part 2' consideration of guillemot and razorbill of FFC SPA [REP4-014] (updated at Deadline 6 [REP6-106]). Potential compensation measures regarding guillemot and razorbill are considered fully in this Section below.

- 4.4.50. The PADS from NE submitted at Deadline 6 [REP6-295] maintain its position that AEol cannot be ruled out for the Proposed Development in-combination with other projects.
- 4.4.51. Taking into account information provided by the Applicant and NE, the ExA is satisfied that the project alone AEol to the guillemot and razorbill qualifying features of FFC SPA can be excluded.
- 4.4.52. For impacts in-combination with other plans and projects, the Applicant concluded no AEol for the guillemot and razorbill features of FFC SPA, but this was disputed by NE who maintained this position at the close of Examination. The ExA agrees with NE that it is not possible to exclude AEol from in-combination disturbance/displacement for guillemot and razorbill qualifying features of FFC SPA as it has not seen sufficient robust evidence that would bring into doubt NE's position on this as the SNCB.

Farne Islands SPA – guillemot

- 4.4.53. During the Examination, matters relating to the guillemot and razorbill features were the subject of further questioning and discussion. The Applicant's RIAA [APP-038] updated at Deadline 6 [REP6-115] concluded that an AEol could be excluded for the guillemot feature of the Farne Islands SPA from disturbance/displacement both alone and in-combination with other projects. It stated that direct impacts from disturbance/displacement during the non-breeding season during the operational phase would result in the mortality of 1.07 adult birds attributable to the Farne Islands SPA as set out in Table 7-9 of the RIAA [APP-038] updated at Deadline 6 [REP6-115]. The Applicant stated that this would cause no detectable increase to natural baseline mortality and thus a conclusion of no AEol is considered appropriate.
- 4.4.54. At Deadline 1, the Applicant submitted an In-Combination Update for Guillemot and Razorbill [REP1-027]. This provided calculations for guillemot feature of the Farne Islands SPA for the following scenarios:
- The Proposed Development plus all consented offshore windfarm projects.
 - The Proposed Development plus Dudgeon and Sheringham Shoal Extension Projects and all consented projects.
 - All projects.
- 4.4.55. The Applicant explained [REP1-027] that Dudgeon and Sheringham Shoal Extension project was included as the timeline is similar to the Proposed Development. As per the assessment for FFC SPA, the assessment for Farne Islands SPA included consideration of both foraging ranges. The assessment also considered the 70% displacement and 5% mortality figures which is the preferred approach from NE. These figures predict a potential of 23.6% reduction in population size after 30 years. This equals a decrease in growth of 0.9% per annum. The Applicant considers this to be highly precautionary and considers its approach (which leads to a 4.1% reduction in population size after 30 years in contrast to the unimpacted baseline scenario) is appropriate. This would equal a reduction in growth of 0.1% per annum. The Applicant concludes that there is no

potential for AEol to the guillemot feature of the Farne Islands SPA in relation to displacement during the operation and maintenance phase.

- 4.4.56. In its Deadline 3 response, NE [REP3-080] stated that as there are no consented projects within the foraging range of the Farne Islands it acknowledges that this population may be at risk of lower displacement impacts in comparison to the FFC SPA. NE therefore stated that:
- AEol could be ruled out for the guillemot feature of Farne Islands SPA when considering the Proposed Development in-combination with all consented projects; and
 - AEol could not be ruled out for the guillemot feature of the Farne Islands SPA as a result of in-combination impacts with all other projects.
- 4.4.57. The Applicant submitted a guillemot and razorbill evidence and roadmap (on a without prejudice basis) at Deadline 3 [REP3-060] (updated at Deadline 5 [REP5-117] and Deadline 6 [REP6-259] which discussed potential compensation measures. The HRA (without prejudice) [APP-039] originally submitted with the Applicant in relation to kittiwake was updated to include consideration of guillemot and razorbill of the Farne Islands SPA [REP4-014] (updated at Deadline 6 [REP6-106]. Potential compensation measures regarding the guillemot feature of the Farne Islands SPA are considered fully in this Section below.
- 4.4.58. Taking into account information supplied by the Applicant and NE, the ExA is satisfied that the project alone AEol to the guillemot qualifying feature of the Farne Islands SPA can be excluded.
- 4.4.59. For impacts in-combination with other plans and projects, the Applicant concluded no AEol for the guillemot feature of the Farne Islands SPA, but this was disputed by NE who maintained this position at the close of Examination. The ExA agrees with NE that it is not possible to exclude AEol from in-combination disturbance/displacement for the guillemot qualifying feature of the Farne Islands SPA as it has not seen sufficient robust evidence that would bring into doubt NE's position on this as the SNCB.

AEol Assessment Outcomes - Summary

- 4.4.60. The Applicant's RIAA concluded that AEol can be excluded for the European sites listed in Table G from the Proposed Development alone or in combination with other plans and projects. These conclusions were not disputed by NE or any other IP.
- 4.4.61. The Applicant's conclusions in relation to the Arun Valley SAC, SPA and Ramsar site and the River Itchen SAC were disputed by NE but as described above these issues were resolved during the Examination.
- 4.4.62. With regards to the Solent and Dorset Coast SPA, whilst NE did not advise whether the Applicant should update the RIAA to include herring and sandeel prey for tern species, the ExA notes that NE did not disagree with the Applicant's assessment. The ExA does not consider this to have a bearing on the conclusion of no AEol on Solent and Dorset Coast SPA.
- 4.4.63. The ExA is satisfied that AEol on all qualifying features of these sites can be excluded from the Proposed Development alone, or in-combination with other plans and projects.

4.4.64. The ExA is unable to rule out AEoI beyond reasonable scientific doubt from the Proposed Development in-combination with other plans and projects in relation to the following sites:

- Kittiwake of FFC SPA as a result of in-combination collision risk.
- Guillemot and razorbill of FFC SPA in-combination impacts.
- Guillemot of the Farne Islands SPA in-combination impacts.

4.5. ENGAGING WITH THE HRA DEROGATIONS

4.5.1. If the competent authority cannot conclude the absence of an AEoI, such that no reasonable scientific doubt remains, then under the Habitats Regulations the project can proceed only if there are no alternative solutions and there are IROPI why the project must be carried out. Suitable compensatory measures must also be secured to ensure the overall coherence of the UK National Site Network

4.5.2. Despite the position of the Applicant that AEoI could be excluded for all European sites, it submitted a 'without prejudice' derogations case for the kittiwake feature of FFC SPA with its application [APP-039]. This was on the basis that NE had indicated there would be an AEoI during the Evidence Plan Process at the pre-application stage. The derogation case included an assessment of alternative solutions, a case for IROPI and proposed compensatory measures.

4.5.3. In response to the position of NE that the Proposed Development would result in an AEoI for guillemot and razorbill at FFC SPA and guillemot at Farne Islands SPA, the applicant submitted a guillemot and razorbill evidence roadmap on a 'without prejudice' basis at Deadline 3 [REP3-060] (updated at Deadlines 5 and 6) [REP5-117] and [REP6-259]. This document sets out potential small scale compensation measures for guillemot and razorbill.

4.6. CONSIDERATION OF ALTERNATIVES

4.6.1. The wider examination of alternatives to the Proposed Development in terms of the NPS(s) is reported in Chapter 2.3 of this Report. This section addresses the Examination of the alternative solutions test under the requirements of the Habitats Regulations.

4.6.2. Guidance from Defra ('Habitats and Wild Birds Directives: guidance on the application of article 6(4) Alternative solutions, IROPI and compensatory measures' Defra, 2012 and 'Duty to protect, conserve and restore European sites: Competent authorities must take action to help protect, conserve and restored the protected habitats and species of European sites' Defra, Welsh Government, NE, Natural Resources Wales 2021) states that alternatives must be financially, legally, and technically feasible. Alternatives must be capable of achieving the objectives of the Proposed Development and demonstrate a lesser adverse effect or avoid AEoI on the European site in question. This guidance is referred to in the Applicant's HRA Derogations Case [APP-039]. The ExA has considered the alternatives solutions test in line with the requirements of the Habitats Regulations with reference to this guidance and the Examination submissions.

4.6.3. The Applicant's assessment of alternatives, including the 'do-nothing scenario', and of alternative solutions to deliver the objectives of the Proposed Development is presented in Section 4 of [APP-039]. The assessment considered:

- 'Do nothing' scenario.
- Alternative types of wind farm projects which are.
- Offshore wind farms not in the UK Exclusive Economic Zone (EEZ).
- Offshore wind farms within UK EEZ, including:
 - At other locations available to the Applicant.
 - Within other Zones leased from TCE by other developers.
 - Within Zones to be leased by TCE under the Licensing Round 4.
- Consideration of repowering existing wind farms.
- an alternative area within the Rampion Zone.
- design alternatives for the Proposed Development.

4.6.4. The Applicant recognises that the 'do nothing' option would remove any possibility of harm to FFC SPA. However, this option is dismissed by the Applicant on the grounds that this approach would not deliver any of the core project objectives of the Proposed Development or meet any project needs. The Applicant further stated that a 'do nothing' approach is not appropriate given the need to tackle climate change.

4.6.5. In relation to alternative locations not in the UK EEZ, the Applicant has dismissed this option as it would not meet any of the core project objectives for the Proposed Development as it would not contribute to the need which is identified for the UK and that sites outside the UK are required for other countries to achieve their own policy targets.

4.6.6. The Applicant has dismissed alternative UK EEZ locations as they would not meet the core project objectives, are not considered feasible and such development is seen as complementary rather than an actual alternative and other sites may also have adverse effects on European site(s). The Applicant also stated the strength and urgency of the IROPI case demands implementation of the Proposed Development even if another site could have lesser effects on European site(s).

4.6.7. The application explains that it is unrealistic to repower existing wind farms, this is partly because existing wind farms are currently still operational and due to advances in technology, it is considered that the pairing foundations are likely to be unfeasible with larger turbines. Therefore, repowering of existing sites has been dismissed as a realistic alternative.

4.6.8. The Applicant gives consideration to the ScotWind Leasing launched by TCE Scotland in 2020. ScotWind projects were dismissed by the Applicant as it was considered that the ScotWind sites as well as the Proposed Development would be required to help achieve renewable energy generation and reduce carbon. It is also possible that ScotWind projects may have ecological impacts which would also warrant a project level HRA for each project.

4.6.9. Consideration was given to Round 3 Zones, but this was dismissed by the Applicant as these sites together with the Proposed Development would be required and therefore are not considered to be an alternative solution.

4.6.10. Consideration was given to Round 4 projects, however as these projects are unlikely to generate power on any scale prior to 2030 the Applicant does not consider this would meet core project Objective No 4 "*delivering a significant volume of (UK) offshore wind in the 2020's*". The Applicant also points out that other comparable projects to the north of the Proposed Development are likely to give rise

to adverse effects on kittiwake and that effect from the Proposed Development would be minimal.

- 4.6.11. Finally with regards to alternative sites, the Applicant considered these within the Rampion Zone. However, they were dismissed because the Applicant considered the remainder of Zone 6 area to be suboptimal for the development of an offshore wind farm.
- 4.6.12. The summary of alternative solutions is reviewed in Section 4.6 of [APP-039]. The Applicant concludes that there are no feasible alternative solutions which would deliver the same objectives as the Proposed Development proposals.
- 4.6.13. RIES Q10 asked the Applicant to confirm if it is relying upon the same 'without prejudice' 'no alternative solutions' case for FFC SPA and the Farne Islands SPA. In their response [REP5-120] the Applicant confirmed that the same derogation case (including 'no alternative solutions' and IROPI) applies to FFC SPA and the Farne Islands SPA.
- 4.6.14. No comments were received from any IP in respect of the consideration of alternatives specifically related to HRA matters.
- 4.6.15. On this basis, the ExA is satisfied that no alternative locations or sites exist for the Proposed Development that would present a feasible alternative solution.
- 4.6.16. The ExA has concluded that a compelling need for the Proposed Development has been established and that the 'do nothing' option is not a feasible alternative. In HRA terms the 'do nothing' option would fail to meet the objectives of the Proposed Development and is not considered an alternative solution.
- 4.6.17. The final design for the Proposed Development has been reached following a consultation, i.e. through public consultation and evidence plan meetings. The siting of the Proposed Development has been influenced by geological, shipping and landscape and visual factors. The Maximum Development Scenario has also assessed adverse effects on kittiwakes. The Applicant considers that design changes are not an alternative solution.
- 4.6.18. Taking into account this information, the ExA is satisfied that no alternative design parameters are known to be implementable that would present a feasible alternative solution.
- 4.6.19. Alternatives must be financially, legally, and technically feasible to constitute an alternative solution. The ExA considers that the alternatives assessed would not constitute an alternative solution to the objectives of the Proposed Development. The ExA is satisfied that no alternative solutions exist which would deliver appreciable benefits in terms of adverse effects on the European site.

4.7. IMPERATIVE REASONS OF OVERRIDING PUBLIC INTEREST (IROPI)

- 4.7.1. The need for the Proposed Development is discussed in Chapter 1.3 of this Report. This section addresses the examination of the IROPI test under the requirements of the Habitats Regulations.

- 4.7.2. The Applicant's case for IROPI under the HRA process is presented in [APP-039]. Section 5.3 sets out the Applicant's reasoning that there is an imperative need for the Proposed Development, with reference to combatting climate change, socio-economic benefits, employment, impact of construction on Gross Value Added, supply chain and skills development. Paragraphs 5.3.21 to 5.3.32 set out the case that the reasons are overriding and in the public interest.
- 4.7.3. The Proposed Development would not affect any priority habitats or species (as identified in the Habitats Regulations) and therefore the IROPI is restricted to reasons of human health, public safety, or beneficial consequences of primary importance to the environment/can include consideration of social and economic reasons [APP-039].
- 4.7.4. Q11 of the RIES asked the Applicant to confirm if they are relying upon the same 'without prejudice' 'no alternative solutions' case for the FCC SPA and the Farne Islands SPA. In their response [REP5-120] the Applicant confirmed that the same derogation case (including 'no alternative solutions' and IROPI) applies to FCC SPA and the Farne Islands SPA.
- 4.7.5. As identified above, the case for Development Consent is addressed in Section 5 of this Recommendation which concludes that there is a compelling need for the Proposed Development.
- 4.7.6. Taking into account the information surrounding the need for the Proposed Development, the public interests presented, and that the interests are overriding when measured against the adverse effects on the affected features of the FCC SPA and Farne Islands SPA the ExA is of the opinion that IROPI for the Proposed Development has been established.

4.8. COMPENSATORY MEASURES

- 4.8.1. The Applicant submitted a proposed package of compensatory measures for the following sites and features:
- Kittiwake feature of FCC SPA.
 - Guillemot and razorbill features of the FCC SPA.
 - Guillemot feature of the Farne Islands SPA.
- 4.8.2. At Deadline 4, the Applicant submitted the document 'Alternative Schedule 17 (on a without prejudice basis) Revision B [REP4-016] to include measures for guillemot and razorbill which would be secured through Schedule 17 of the DCO. This document was updated once again at Deadline 6 [REP6-111]. The first iteration of Schedule 17 is provided at [PD-017] which relates solely to compensation measures for kittiwake.

Kittiwake – FCC SPA

- 4.8.3. The details of the compensatory measures proposed by the Applicant for kittiwake are provided in the following documents:
- HRA (without prejudice) Derogation Case [APP-039] (updated at Deadlines 4 and 6) [REP4-014] and [REP6-109].
 - Appendix 7 – Further information for Action Point 33 – KIMP [REP1-026].

- KIMP [REP3-058] (this document supersedes [REP1-026]. Further updated at Deadline 5 [REP5-115] and this document is referred to in the rest of this section.

4.8.4. The initial compensatory measures suggested by the Applicant in [APP-039] for kittiwake of the FFC SPA were:

- Providing monetary contribution to strategic compensation through the Marine Recovery Fund (MRF).
- Collaborating with another Offshore Wind Farm project (e.g. Dogger Bank South OWF) to provide additional nesting spaces for kittiwake through either purpose-built artificial nesting structure (ANS) (such as an artificial nesting tower near to Gateshead), artificial ledges or other means.
- Improving key kittiwake habitat within FFC SPA.
- Improving kittiwake breeding success through reducing avian predation (diversionary feeding and predator removal).
- Improving kittiwake breeding success through supplementary feeding.

4.8.5. These proposed compensation measures were refined in the subsequent submission of the HRA (without prejudice) Derogation Case submitted at Deadline 4 [REP4-014]. The potential compensation measures considered in this document are:

- Provision of a monetary contribution to strategic compensation through the MRF.
- Collaborating with other offshore wind farms (such as Dogger Bank South) to provide additional nesting spaces for kittiwake either at an ANS, artificial ledges or other means.

4.8.6. At Deadline 2, NE [REP2-037] commented on the KIMP [REP1-026] stating that whilst it does not usually support the use of ANS, in this case NE considers the additional nesting at the ANS at Gateshead is an appropriate and proportionate compensation measure. However, NE commented that the Applicant has used the central estimate as the basis for calculating how many nesting spaces would be required to compensate for the impact. NE considered the 95% upper confidence interval (UCI) should be used as the Applicant had only considered a 1:1 compensation ratio. NE advised that presentation of 2:1 and 3:1 ratios should be included. These points were repeated by NE at Deadline 4 [REP4-091].

4.8.7. At Deadline 5 [REP5-115] the Applicant provided a calculation using the 95% UCI in the updated KIMP. However, the Applicant maintains its position that the central estimate is the most appropriate means of calculating requirements for compensation based on evidence. It considers that use of the 95% UCI is unrealistic and does not reflect the level of impact expected from the Proposed Development. The use of the 95% UCI increased the collision risk impact from 0.72 to 1.69 breeding adult kittiwake per annum.

4.8.8. In the updated KIMP submitted at Deadline 5 [REP5-115], the Applicant set out the ratios for 1:1, 1:2 and 1:3 for both the Central Impact Value and the UCI. The Applicant stated that use of a 95% UCI and a ratio of 3:1 would result in 16 additional nesting spaces. However, it is pointed out by NE [REP6-288] that this figure relates to Hornsea Three Stage 1 approach, whereas NE considers the Hornsea Three Stage 2 approach to be appropriate, this would result in provision of 33 nesting spaces. The Applicant considers that provision of an additional five

nesting spaces would compensate for the impact to the kittiwake feature of FFC SPA.

- 4.8.9. At Deadline 6 [REP6-288], NE summarised what it considered the approach to compensation should consist of:
- Input value of 95% UCI to reflect the uncertainty regarding the potential impacts of the development.
 - Use of the Hornsea Three Stage 2 approach as this takes into account the need for the ANS to produce recruits to service the structure itself when birds need replacing, rather than draw on the wider biogeographic population to do so.
 - Ratio of 3:1 to reflect various uncertainties such the timing and speed of colonisation of the ANS, whether the ANS will grow the population rather than simply relocating breeding birds to it and the extent to which its recruits would end up breeding in the National Site Network.
- 4.8.10. An agreement on the number of nesting spaces had not been reached by the close of Examination.
- 4.8.11. The Applicant updated 'Alternative Schedule 17 (on a without prejudice basis) Revision B at Deadline 4 [REP4-016] and Deadline 6 [REP6-111]. Part 1 of this Schedule relates specifically to kittiwake. Part 1 states that no offshore works shall commence until the undertaker has confirmed in writing whether it would make a payment to the MRF, or a Final KIMP has been submitted to the Secretary of State for approval.
- 4.8.12. Q14 of the RIES asked NE to confirm it was satisfied with the content of Alternative Schedule 17 (on a without prejudice basis), in relation to kittiwake, guillemot and razorbill. With regards to kittiwake, NE responded [REP6-287] stating that there is no inclusion of a requirement to provide a schedule of preparation and delivery. NE considers this is important and should be included. NE also note that Schedule 17 includes a requirement that no operation may be undertaken until ANS have been in place for four full breeding seasons. However, NE consider that this should be reworded to require all compensation options to be delivered four full breeding seasons prior to works, this is in the event that other compensation options are implemented.
- 4.8.13. The PADS from NE submitted at Deadline 6 [REP6-295] considers the proposed compensation measures are proportionate to the level of impact and considers this matter closed on the basis that advice given by NE is followed.

Guillemot and razorbill – FFC SPA and Farne Islands SPA

- 4.8.14. In response to NE's concerns in respect of guillemot and razorbill of FFC SPA and the Farne Islands SPA, the Applicant submitted a Guillemot and Razorbill Evidence and Roadmap (on a without prejudice basis) at Deadline 3 [REP3-060] (updated at Deadline 5 [REP5-117] and Deadline 6 [REP6-259]). This document presents the process undertaken to identify sites which may have potential to be used for compensation measures for guillemot and razorbill. The Applicant updated the HRA (without prejudice) derogations case to include compensation proposals for guillemot and razorbill [REP4-014] and updated at Deadline 6 [REP6-019].

- 4.8.15. The potential compensatory measures which may be used at identified sites, identified by the Applicant for guillemot and razorbill include the reduction of disturbance from recreational activities through the following measures:
- Signage.
 - Visitor access statements.
 - Restriction of dogs.
 - Restriction of visitor time.
 - Restriction of visitor approach.
 - Restriction of boat approach distances.
 - Seasonal closures.
 - Birdwatching codes.
 - Wardens.
 - Coordination with equipment hire business.
 - Coordination with recreational organisations.
- 4.8.16. In its response at Deadline 4, NE [REP4-091] stated that the calculations cannot be checked for accuracy as the Applicant has used the Hornsea Four compensation calculation method but has not provided details of the parameters used. NE requested that an updated document is presented which includes a clear explanation of the method and parameters used to calculate the compensation quanta. NE recommended that 2:1 and 3:1 ratios are also considered as currently Table 8.1 [REP3-060] only includes a 1:1 compensation ratio. The Applicant provided this information in Table 4-1 of the Guillemot and Razorbill Evidence and Roadmap submitted at Deadline 5 [REP5-127].
- 4.8.17. In its Deadline 4 submission, NE [REP4-091] also stated that further work should be undertaken to establish the current levels and sources of disturbance each colony experiences. This assessment should be combined with discussions with local experts who could advise specific compensation measures which would be most effective at each site. The Applicant responded at Deadline 5 [REP5-120] stating that initial site investigations and engagement with local experts have been undertaken at 10 short listed colonies during the 2024 breeding season and that these are all in locations in the south west of England. Information regarding site investigations is provided in Appendix A of [REP3-060] (updated at Deadline 5 [REP5-117] and Deadline 6 [REP6-259]). The conclusion of the guillemot and razorbill roadmap states that when identifying sites with potential for compensatory measures, five sites have low potential, two sites have moderate potential, and three sites have high potential.
- 4.8.18. At Deadline 5, the Applicant submitted an Outline GRIMP [REP5-127] (updated at Deadline 6 [REP6-271]). This plan has been development in the event that the Secretary of State does not agree with the conclusions of the Applicant that there are no AEoI for guillemot and razorbill of FFC SPA or guillemot of Farne Islands SPA.
- 4.8.19. The Applicant applied the method [REP6-271] used by Hornsea Four to estimate the compensation requirement for the Proposed Development. This was 1.26 breeding adult guillemot and 1.23 breeding adult razorbill at FFC SPA and 1.07 guillemot at the Farne Islands SPA to calculate the number of additional breeding pairs which would be required to compensate for the impact from the Proposed Development. The Applicant stated that this method provides a rough estimate of the compensation quota which would be required although it also stated that further discussion is needed with NE to agree and appropriate compensation calculation

methodology. The Applicant considers this may result in a reduction in the compensation quantum required for the Proposed Development. Furthermore, the Applicant considers it likely that this measure would be progressed in collaboration with other proposed developments and therefore it would be of use to understand the compensation needs of other projects before the quantum of compensation and selection of final sites are agreed.

- 4.8.20. The Applicant updated 'Alternative Schedule 17 (on a without prejudice basis) Revision B at Deadline 4 [REP4-016] and Deadline 6 [REP6-111]. Part 2 of this Schedule relates specifically to guillemot and razorbill. It states that no offshore works shall commence until the undertaker has confirmed in writing whether it would make a payment to the MRF, or a Final Guillemot and Razorbill Management Plan has been submitted to the Secretary of State for approval.
- 4.8.21. Q14 of the RIES asked NE to confirm if it was satisfied with the content of Alternative Schedule 17 (on a without prejudice basis), in relation to kittiwake, guillemot and razorbill. NE responded for kittiwake but not with regards to guillemot and razorbill. The PADS from NE submitted at Deadline 6 [REP6-295] advises that while NE maintains its position that AEol cannot be excluded in-combination with other plans and projects, it considers that the proposed compensation measures are proportionate to the level of impact. NE consider that this issue is now resolved on the basis that the required level of provision is followed.

ExA Conclusions on Compensatory Measures

- 4.8.22. Taking all of the above considerations into account, the ExA considers that there is sufficient information for the Secretary of State to establish that appropriate compensatory measures can be implemented, in order to fulfil their duty under the requirements of the Habitats Regulations. The ExA concludes that the overall package of proposed compensation measures is feasible, appropriate and would ultimately ensure the overall coherence of the UK National Site Network.
- 4.8.23. If the Secretary of State is minded to agree with the ExA recommendation, compensatory measures would be required of the kittiwake feature of the FFC SPA.
- 4.8.24. The ExA agrees with NE that the collaborative approach to compensatory measures proposed by the Applicant is sufficient for the modest level of impact anticipated from the Proposed Development and agrees the implementation of the KIMP [REP5-115] and Guillemot and Razorbill Evidence and Roadmap [REP5-117] and the GRIMP [REP5-127] secured via Alternative Schedule 17 [REP6-111] has the potential to deliver a proportionate level of benefit.
- 4.8.25. In the event the Secretary of State was minded to agree with the ExA recommendation, Schedule 17 has been inserted into the Recommended DCO to secure compensatory measures for the kittiwake features of the FFC SPA. Part 1 of Schedule 17 of requires a final KIMP to be approved by the Secretary of State which would need to be based on compensation values specified in Schedule 17 Part 1(5)(b).
- 4.8.26. In light of the evidence presented by the Applicant and precedents from previous methods accepted by the Secretary of State in determining to grant consent, the ExA recommends to the Secretary of State that the following parameters are appropriate to use to calculate the compensation quanta for kittiwake for the FFC SPA for the Proposed Development specified in Schedule 17 Part 1(5)(b).

- 4.8.27. In relation to the Central Impact Value (CIV), the ExA recommends that the CIV should be used in the interest of taking a consistent approach on the grounds that it was accepted by the Secretary of State in determining consent for Hornsea Project Three and Hornsea Project Four OWF and the Proposed Development would have a significantly lower impact on kittiwake than those projects. The ExA has reached conclusions on the following points:
- 1:2 ratio. The reason the ExA recommends using a ratio of 1:2 is that the connectivity of the Proposed Development with the FFC SPA is low given their locations.
 - The Stage 2 approach, as this has been recommended by NE for this Proposed Development and the ExA finds no substantial reasons against using a Stage 2 approach.
- 4.8.28. This results in a compensation quantum of 9.32 breeding pairs of kittiwake [Table 4-1 REP5-115], which the ExA deems sensible to round up to 10 nesting sites for breeding kittiwake pairs at the existing ANS at Gateshead. The Applicant confirms the existing ANS at Gateshead would be able to accommodate 10 nesting sites in paragraph 6.2.2 of the KIMP [REP5-115]. The ExA has inserted this quantum into in Schedule 17 Part 1(5)(b) of the Recommended DCO.
- 4.8.29. Regarding guillemot and razorbill, the ExA considers that the Applicant's proposals would deliver appropriate amount of compensation.

4.9. HRA CONCLUSIONS

- 4.9.1. The Proposed Development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the project with respect to adverse effects on potentially affected sites must be assessed by the Secretary of State.
- 4.9.2. The European Sites and their qualifying features considered in the Applicant's assessment of LSE are shown in Appendix E of the Applicant's RIAA [APP-038] updated at Deadline 6 [REP6-115]. LSE were identified for sites listed in Table 10.1 of the RIAA [APP-038] updated at Deadline 6 [REP6-115] both from the Proposed Development alone and in-combination with other plans or projects.
- 4.9.3. The methodology and outcomes of the Applicant's screening for LSE on European sites or sites and features for which LSE were identified were not disputed by any IP. The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.
- 4.9.4. However, the ExA findings are that AEoI cannot be excluded on kittiwake of FFC SPA as a result of in-combination collision risk; guillemot and razorbill of FFC SPA in-combination impacts and guillemot of the Farne Islands SPA in-combination impacts from the Proposed Development.
- 4.9.5. The Applicant has submitted an assessment of alternative solutions, a case for IROPI, and proposed compensation measures. The subjects of alternative solutions, IROPI, and compensation were given substantial consideration during Examination. The ExA is satisfied that no feasible alternative solution exists that would represent a lesser adverse effect to the Proposed Development. Given the

evidence provided to the Examination, with regards to the case for IROPI the ExA is of the opinion that IROPI for the Proposed Development could be established.

- 4.9.6. The findings of the Examination are that the compensation package as proposed is feasible and appropriate and is adequately secured in the Recommended DCO. The ExA recommends that Schedule 17 is included and has added it to the Recommended DCO.
- 4.9.7. Schedule 17 of the Recommended DCO contains the necessary provisions for the compensatory measures for kittiwake (Part 1) and guillemot and razorbill (Part 2). It is the ExA position that, should the Secretary of State decide to make the Order and find AEol cannot be excluded for kittiwake, guillemot and razorbill features of the FFC SPA and the guillemot feature of the Farne Islands SPA, the compensation quantum in Schedule 17 Part 1(5)(b) of the Recommended DCO should be consistent with the compensation quantum decided by the Secretary of State, and added to the made Order.
- 4.9.8. The ExA is satisfied that the Proposed Development accords with NPS EN-1 2011 in relation to HRA. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. NPS EN-3 2024 in particular makes specific comments on factors influencing selection and design, technical considerations, impacts and mitigation and compensation in relation to HRA. The ExA has had full regard to them in reaching our conclusions and as no IP raised specific concerns with potential compliance against these tests in respect to HRA matters, the ExA considers that the Proposed Development would comply with NPS EN-1, EN-3 and where relevant EN-5 2024 in relation to HRA.
- 4.9.9. The ExA considers that there is sufficient information before the Secretary of State to enable them to undertake an appropriate assessment and to apply the derogation tests of the Habitats Regulations of alternative solutions, IROPI, and compensation in order to fulfil their duty under the requirements of the Habitats Regulations.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

- 5.1.1. This Section provides an evaluation of the planning merits of the Proposed Development. It considers the legal and policy context set out in Section 2 and individual applicable legal and policy requirements identified in Sections 3 and 4 above. Whilst HRA has been documented separately in Section 4, relevant facts and issues set out in that Section are taken fully into account.
- 5.1.2. In reporting on the planning issues below, the ExA confirms that the Applicant has complied with all pre-application requirements in respect to the EIA Regs. The ExA is content that the ES and associated information submitted by the Applicant at the time of making the application and subsequently during the Examination, have provided an adequate assessment of the environmental effects of the Proposed Development.
- 5.1.3. The ExA finds that the Applicant's approach to assessment of alternatives as described in the ES is comprehensive and complies with the requirements of the EIA Directive (Regulation 14 and Schedule 4). The ExA is also satisfied that during Examination the Proposed Development has been through sufficient scrutiny to ensure that the Applicant studied reasonable alternatives before determining the chosen options for specific reasons and taking into account the effects of the options on the environment. In that regard, the ExA is also satisfied that the requirements of Section 4.4 of NPS EN-1 are met.

5.2. THE PLANNING BALANCE

Need for the Proposed Development

- 5.2.1. NPS EN-1 and EN-3 2011 demonstrate a clear need for the Proposed Development, with particular reference to paragraph 4.1.2 which states that the Secretary of State must start with a presumption in favour of granting consent to applications for energy NSIPs.
- 5.2.2. Subject to the mitigation hierarchy being applied and controlled within the Recommended DCO, the ExA is satisfied that the need for the Proposed Development has been emphatically established through the NPS EN-1 and EN-3 2011. The ExA considers the needs case has thus been met.
- 5.2.3. NPS EN-1 and EN-3 2024, which is an important and relevant consideration for the Proposed Development, places a greater emphasis of urgency for the need based upon meeting energy needs and meeting energy security requirements. The identification of offshore wind energy as CNP is the notable difference between the NPS EN-1 2011 and NPS EN-1 2024. For that reason, the ExA does not consider the Proposed Development would conflict with NPS EN-1 2024.

Alternatives

- 5.2.4. The ExA is satisfied that the alternative options for the Proposed Development have been rigorously tested by the Applicant. The ExA concludes that the Applicant has considered all reasonable alternatives to each element of the Proposed Development in the ES [REP6-163], and that the scheme represents the most

appropriate location having regard to environmental and technical constraints of the proposed and other sites considered.

- 5.2.5. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had full regard to them in reaching our conclusions and in respect to Alternatives, the ExA considers that the Proposed Development would comply with NPS EN-1, EN-3 and where relevant EN-5 2024.

OFFSHORE EFFECTS

Offshore and Intertidal Ornithology

- 5.2.6. The ExA does not concur with ES Chapter 12 [REP6-125] that the significance of effect from the Proposed Development on offshore and intertidal ornithology would, taken as a whole, be Negligible (Not Significant) in terms of EIA. For the reasons set out in Section 3 of this Recommendation, the ExA considers that the significance of effect would be Minor Adverse, because there are potentially significant effects to the GBBG.
- 5.2.7. The ExA is content (as is NE) that the DML, with the ExA's added Condition 18(5), would secure adequate post-consent monitoring through adaptive management such that in the event monitoring identifies impacts which are beyond those predicted in the ES, an adaptive management plan to reduce effects to within what was predicted within the ES would be required by the Applicant. 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 DML within the Recommended DCO.
- 5.2.8. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.9. The ExA attaches a Little Negative weight to ornithology EIA matters in the planning balance.
- 5.2.10. Under the Transitional Arrangements, policy compliance with NPS EN-1 and EN-3 2024 is not required. The ExA has nevertheless identified that the Proposed Development would not fully comply with paragraphs 2.8.137 to 2.8.140 of NPS EN-3 2024 as the Applicant has not provided a Requirement in the final draft DCO [REP6-007] in relation to providing "as built" parameters to be used in future cumulative assessments.
- 5.2.11. However, the ExA considers this to be a technical matter only, and that the broad thrust of policies in NPS EN-3 2024 are not dissimilar to those to NPS EN-3 2011, rather than they require new applications to go further. Therefore, there is nothing in NPS EN-1 2024 which would render the current scheme to be considered

unacceptable in ornithological matters when taking into account the regard to be had to it during the Transitional Arrangements.

Marine Mammals

- 5.2.12. The ExA concurs with ES Chapter 11 [REP6-123] that the significance of effect from the Proposed Development on marine mammals, taken as a whole, would be Minor Adverse (Not Significant) caused by the temporary construction activities.
- 5.2.13. The ExA considers most of the issues have been resolved by the Applicant's commitment to use DBBC as an embedded mitigation measure throughout construction activities. 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 DML within the Recommended DCO.
- 5.2.14. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.15. The ExA attaches a Little Negative weight to marine mammal matters in the planning balance.
- 5.2.16. Under the Transitional Arrangements, policy compliance with NPS EN-1 and EN-3 2024 is not required. The ExA is aware that NPS EN-3 2024 paragraph 2.8.221 requires Applicants to develop an ecological monitoring programme to monitor impacts during the pre-construction, construction and operational phases to identify the actual impacts caused by the project and compare them to what was predicted in the EIA.
- 5.2.17. The ExA has proposed an amendment to Condition 11(j) of both Schedules 11 and 12 of the DML, which is contained within the Recommended DCO, which requires a monitoring plan, which accords with the Offshore In-Principle Monitoring Plan, and is to detail proposals for pre-construction monitoring surveys, construction monitoring, post- construction monitoring and related reporting. This addition would address this additional requirement and therefore having regard to NPS EN-1 and EN-3 2024, the ExA considers there if no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Fish and Shellfish

- 5.2.18. The ExA concurs with ES Chapter 8 [REP6-179] that the significance of effect from the Proposed Development to fish and shellfish would be Minor Adverse (Not Significant), caused mainly by the temporary construction activities.
- 5.2.19. The ExA is satisfied that adequate mitigation such as the recommended full season restrictions of piling activity and the enhanced monitoring, which are set out in the Recommended DCO as amendments to the final draft DCO [REP6-007] would ensure the nesting black seabream (associated with the Kingmere MCZ) and other fish species would not be impacted by noise from piling. 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 DML within the Recommended DCO.

5.2.20. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.

5.2.21. The ExA attaches a Little Negative weight to fish and shellfish matters in the planning balance.

5.2.22. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to fish and shellfish and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Coastal Processes and Benthic Subtidal and Intertidal Ecology

5.2.23. The ExA concurs with ES Chapters 6 [REP6-175] and 9 [REP6-181] that the significance of effect from the Proposed Development on coastal processes and to the benthic ecology would be Minor Adverse (Not Significant), caused by the construction activities.

5.2.24. The ExA is satisfied that mitigation such as the HDD under Climping Beach and the use of micro-siting for the subsea cables would sufficiently safeguard benthic species, habitats and coastal processes. 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 DML and Requirements within the Recommended DCO.

5.2.25. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.

5.2.26. The ExA attaches a Little Negative weight on coastal processes and benthic, subtidal and intertidal ecology matters in the planning balance.

5.2.27. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to coastal processes and benthic subtidal and intertidal ecology and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Commercial Fisheries

5.2.28. The ExA concurs with ES Chapter 10 [REP6-121] that the significance of effect from the Proposed Development on commercial fisheries would be Minor Adverse (Not Significant), caused primarily by the construction and operational activities.

- 5.2.29. 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 DMLs and Requirements in the Recommended DCO.
- 5.2.30. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.31. The ExA attaches a Little Negative weight to commercial fishing matters in the planning balance.
- 5.2.32. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to commercial fisheries and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Shipping and Navigation

- 5.2.33. The ExA concurs with ES Chapter 13 [REP6-127] that the significance of effect from the Proposed Development on shipping and navigation would be Minor Adverse (Not Significant), caused primarily by the construction and operational activities.
- 5.2.34. 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 DMLs and Requirements in the Recommended DCO.
- 5.2.35. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.36. The ExA attaches a Little Negative weight to shipping and navigation matters in the planning balance.
- 5.2.37. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to shipping and navigation and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Aviation

- 5.2.38. The ExA concurs with ES Chapter 14 [REP6-129] that the significance of effect from the Proposed Development on civil and military aviation would be Minor Adverse (Not Significant).
- 5.2.39. 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 within the

DMLs and Requirements in the Recommended DCO, with particular regard to Requirements 38 and 39 which would ensure no adverse effects from the Proposed Development irrespective of the final height of the WTGs. However, changes to the IFPs and adaption of radar systems would be necessary, thereby resulting in residual minor adverse effects.

- 5.2.40. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.41. The ExA attaches a Little Negative weight to aviation matters in the planning balance.
- 5.2.42. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to aviation and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Marine Archaeology

- 5.2.43. The ExA concurs with ES Chapter 16 [REP6-133] that the significance of effect from the Proposed Development on marine archaeology would be Negligible (Not Significant).
- 5.2.44. 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 DML within the Recommended DCO.
- 5.2.45. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.46. The ExA considers there are no residual effects or issues which affect the planning balance.
- 5.2.47. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to marine archaeology and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

ONSHORE EFFECTS

Terrestrial Ecology

- 5.2.48. The ExA concurs with ES Chapter 22 [REP6-147] that the significance of effect from the Proposed Development on terrestrial ecology would, taken as a whole, be Minor Adverse (Not Significant), caused primarily by the construction activities in the

shorter-term, which would become negligible in the longer-term once the BNG measures establish.

- 5.2.49. The ExA is satisfied that the Applicant has effectively mitigated effects on sensitive ecological receptors such as Ancient Woodland, veteran trees, protected species and SSSIs and the Recommended DCO sufficiently secures compensation for the loss of vegetation particularly Category A and B trees and hedgerows. The ExA is satisfied that the Applicant's plans for mitigation, compensation and BNG, particularly commitments for 70% of the biodiversity deficit to be secured prior to commencement of construction would mitigate and compensate for identified localised short-term effects caused by the construction of the Proposed Development. The ExA is further satisfied on the adequacy of the relevant commitments in the Commitments Register [REP6-227] which are secured in the Recommended DCO.
- 5.2.50. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.51. The ExA attaches a Little Negative weight to terrestrial ecology matters in the planning balance.
- 5.2.52. Under the Transitional Arrangements, policy compliance with NPS EN-1 and EN-3 2024 is not required. The ExA is aware that NPS EN-1 2024 places additional considerations for terrestrial ecology and nature conservation, some of which the Applicant has addressed but others have not been fully achieved, and thus is arguably not in full compliance. The ExA considers the following points from NPS EN-1 2024 are not fully met:
- Paragraphs 4.6.11 to 4.6.18 regarding delivery of wider environmental net gains.
 - Paragraph 5.4.33 regarding opportunities to sequester carbon.
 - Paragraph 5.4.36 to produce a Biodiversity Management Strategy.
- 5.2.53. However, the ExA considers that the broad thrust of policies in NPS EN-1 2024 are not dissimilar to those to NPS EN-1 2024, rather that they require new applications to go further. Therefore, there is nothing in NPS EN-1 2024 which would render the current scheme to be considered unacceptable in terrestrial ecology matters when taking into account the regard to be had to it during the Transitional Arrangements.

Seascape, Landscape and Visual

- 5.2.54. The ExA concurs with ES Chapters 15 [REP6-131] and 18 [REP6-137] that the significance of effect from the Proposed Development to seascape, landscape and visual would, in some instances, be Major Adverse (Significant), caused by the operational activity and the loss of views.
- 5.2.55. The Applicant proposes adequate mitigation in the form of the provision of landscaping which is secured by Requirements 12 and 13 of the Recommended DCO. Additionally, the Applicant has agreed separate Requirements 41, 42 and 43 with Horsham DC, West Sussex CC and the SDNPA for a specific scheme of mitigation and compensation to further mitigate the effects of the Proposed

Development on landscape character and visual effects. 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 Requirements in the Recommended DCO.

- 5.2.56. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development would partially comply with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011. This is because without mitigation, the Proposed Development would have a Major Adverse effect to the seascape, landscape and visual effects and in particular, to the Special Qualities of the SDNP. The ExA is satisfied that the Proposed Development would accord with other national and local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.57. The ExA recognises that NPS EN-1 2011 requires weight to be appropriately apportioned having regard to the fact that NSIPs inevitably cause some degree of effect to landscape character and visual receptors, even with mitigation. With this in mind, and the fact that mitigation would, in time, reduce the effects of the Proposed Development, the ExA attaches Moderate Negative weight to seascape, landscape and visual matters in the planning balance.
- 5.2.58. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to seascape, landscape and visual and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Historic Environment

- 5.2.59. The ExA concurs with ES Chapter 25 [REP6-153] 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 archaeological remains in the National Park caused by construction of the cable corridor. The ExA find that in respect to the NPPF, the significance of effect would amount to less than substantial harm.
- 5.2.60. The ExA is satisfied that adequate mitigation is secured within the Recommended DCO, with specific regard to landscaping, which would over time establish and thus reduce the scale of the effects from the Proposed Development on heritage assets and protect their significance.
- 5.2.61. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations. The application of paragraph 208 of the NPPF and the need to weigh the less than substantial harm against the public benefits will be done in Section 5.3 of this Recommendation below.
- 5.2.62. The ExA attaches a Little Negative weight to the historic environment matters in the planning balance.

- 5.2.63. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to the historic environment and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Traffic and Access

- 5.2.64. The ExA concurs with ES Chapter 23 [REP6-149] that the significance of effect from the Proposed Development on traffic and access would be Negligible to Minor Adverse (Not Significant) caused from the construction activities.
- 5.2.65. 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 relevant Requirements in the Recommended DCO.
- 5.2.66. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.67. The ExA attaches a Little Negative weight to this effect on traffic and access matters in the planning balance.
- 5.2.68. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to traffic and access and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Air Quality

- 5.2.69. The ExA concurs with ES Chapter 19 [REP6-139] that the significance of effect from the Proposed Development on air quality would be Negligible to Minor Adverse (Not Significant) caused from the construction activities.
- 5.2.70. 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 by the relevant Requirements in the Recommended DCO.
- 5.2.71. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.72. The ExA attaches a Little Negative weight to this effect on air quality matters in the planning balance.
- 5.2.73. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to air quality and the ExA considers there to be no

obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Soils and Agriculture

- 5.2.74. The ExA concurs with ES Chapter 20 [REP6-143] that the significance of effect from the Proposed Development on soils and agriculture would be Negligible to Minor Adverse, caused by the loss of BMVAL at the permanent onshore sub-station.
- 5.2.75. The ExA is satisfied that adequate mitigation is secured by the relevant Requirements in the Recommended DCO.
- 5.2.76. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.77. The ExA attaches a Little Negative weight to this effect on air quality matters in the planning balance.
- 5.2.78. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to soils and agriculture and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Minerals Safeguarding and Ground Conditions

- 5.2.79. The ExA concurs with ES Chapter 24 [REP6-151] that the significance of effect from the Proposed Development on ground conditions would be Major Adverse (Significant) due to the sterilisation of soft sand within a MSA.
- 5.2.80. The ExA is satisfied that the sterilisation would only be short-term and temporary for the lifetime of the operation of the Proposed Development and would not in the longer-term restrict or prevent any future extraction of the soft sand. The ExA is also satisfied that the adequate mitigation is secured by the relevant Requirements in the Recommended DCO.
- 5.2.81. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.82. The ExA attaches a Little Negative weight to this effect on ground conditions matters in the planning balance.
- 5.2.83. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to minerals safeguarding and ground conditions and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Water Environment

- 5.2.84. The ExA concurs with ES Chapter 26 [REP6-155] that the significance of effect from the Proposed Development on the water environment would be Negligible (Not Significant).
- 5.2.85. The ExA is satisfied that the Sequential Test and the Exception Test have been satisfied and regard has been given to the application of the climate change allowances for peak river flow and peak rainfall and the Proposed Development would ensure compliance with the WFD.
- 5.2.86. The ExA is satisfied that the CoCP, secured by Requirement 22 of the Recommended DCO being in accordance with the OCoCP, would contain adequate embedded measures in relation to flood risk, drainage management, protection of water resources and water quality and emergency response, and that Requirement 25 of the Recommended DCO would adequately secure measures to deal with any contamination of groundwater or controlled waters that might occur.
- 5.2.87. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011. The ExA is satisfied that the Proposed Development is in accordance with other national and local policies and strategies and all other relevant legislation including with the NPPF, and relevant flooding and water policies set out in the Arun Local Plan, Horsham District Planning Framework, Mid Sussex District Plan, South Downs Local Plan, West Sussex LLFA Culvert Policy and the Local Flood Risk Management Strategy. There are no other important or relevant considerations
- 5.2.88. The ExA considers there are no residual effects or issues which affect the planning balance.
- 5.2.89. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to water environment and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Population and Human Health

- 5.2.90. The ExA concurs with ES Chapter 28 [REP6-159] that the significance of effect from the Proposed Development on population and human health would be Negligible to Minor Adverse (Not Significant), caused by the construction activities.
- 5.2.91. 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 Requirements in the Recommended DCO.
- 5.2.92. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.

- 5.2.93. The ExA attaches a Little Negative weight to this effect on population and human health matters in the planning balance.
- 5.2.94. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to population and human health and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Noise and Vibration

- 5.2.95. The ExA concurs with ES Chapter 21 [REP6-145] that the significance of effect from the Proposed Development on noise and vibration would be Negligible to Minor Adverse (Not Significant), caused by the construction activities.
- 5.2.96. 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 Requirements in the Recommended DCO.
- 5.2.97. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.98. The ExA attaches a Little Negative weight to this effect on noise and vibration matters in the planning balance.
- 5.2.99. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to noise and vibration and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Socio-Economics

- 5.2.100. The ExA concurs with ES Chapter 17 [REP6-135] that the Proposed Development in socio-economic terms would have positive benefits for the national economy whilst there would be negative effects on recreational activities caused by the construction activities. Therefore, the ExA concurs with ES Chapter 17 that the significance of effect from the Proposed Development to socio economics would be Negligible (Not Significant).
- 5.2.101. 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 Requirements in the Recommended DCO.
- 5.2.102. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.

- 5.2.103. The ExA considers there are no residual effects or issues which affect the planning balance.
- 5.2.104. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to socio-economics and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Waste Management

- 5.2.105. The ExA concurs with the OSWMP [APP-225] the Applicant has adequately applied the waste hierarchy and has advanced a sound recommendation plan for the prevention, re-use and recycling of construction waste. The significance of effect from the Proposed Development from site waste management would be Negligible (Not Significant).
- 5.2.106. 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 Requirements in the Recommended DCO.
- 5.2.107. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.108. The ExA considers there are no residual effects or issues which affect the planning balance.
- 5.2.109. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to waste management and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

OVERALL EFFECTS

Good Design

- 5.2.110. The ExA concurs with the DAS [REP5-023] that the Applicant has adequately promoted good design in respect to the WTGs and for the onshore substation at Oakendene. The significance of effect from the Proposed Development from good design would be Negligible (Not Significant).
- 5.2.111. 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 Requirements in the Recommended DCO. This is particular prevalent by the ExA recommended changes to the final draft DCO [REP6-007] to Requirement 8 and for the insertion of a new Requirement 45 for site-specific plans for the Oakendene substation site and for the construction compounds at Climping and Washington to ensure good design at those sites.

- 5.2.112. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.113. The ExA considers there are no residual effects or issues which affect the planning balance.
- 5.2.114. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. The ExA has nevertheless identified that the Proposed Development has not fully evidenced NPS EN-1 2024's broader approach to good design, which requires good design to be demonstrated in areas such as biodiversity, flood risk, heritage, landscape and views, land use and green infrastructure and soils.
- 5.2.115. However, the ExA considers that the broad thrust of policies in NPS EN-3 2024 are not dissimilar to those to NPS EN-3 2011, rather than they require new applications to go further. Therefore, there is nothing in NPS EN-1 2024 which would render the current scheme to be considered unacceptable in design matters when taking into account the regard to be had to it during the Transitional Arrangements.

Greenhouse Gas Emissions

- 5.2.116. The ExA concurs with ES Chapter 29 [REP6-161] that the significance of effect from the Proposed Development on climate effects would be Negligible (Not Significant).
- 5.2.117. The ExA is satisfied that the Proposed Development would make a positive contribution in respect to GHGs. The ExA is further satisfied that the embedded mitigation proposed means GHG emissions associated with the Proposed Development would be minimised and that any necessary mitigation is adequately secured through the relevant Requirements in the Recommended DCO.
- 5.2.118. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.119. The ExA has had regard to the Finch Judgement, and is satisfied that the ES [REP6-161] considers the full scope of GHG emissions from the Proposed Development through construction, operation and maintenance, and decommissioning has been assessed. The ExA is satisfied there would be no downstream emissions from this Proposed Development and hence believe the Secretary of State can be satisfied on this basis.
- 5.2.120. The ExA considers there are no residual effects or issues which affect the planning balance on GHG emissions matters in the planning balance to avoid "double counting" the substantial positive weight which has been taken into account in the NPS EN-1 2011 in respect to identifying the need for energy including offshore wind.
- 5.2.121. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our

conclusions on matters relating to greenhouse gas emissions and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Major Accidents and Disasters

- 5.2.122. The ExA concurs with ES Chapter 27 [REP6-157] that the significance of effect from the Proposed Development from major accidents and disasters would be Negligible (Not Significant).
- 5.2.123. 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 Requirements and Conditions in the Recommended DCO and DML.
- 5.2.124. Therefore, for the reasons set out in Section 3 of the Recommendation, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 as well as local policies and strategies and all other relevant legislation and there are no other important or relevant considerations.
- 5.2.125. The ExA considers there are no residual effects or issues which affect the planning balance.
- 5.2.126. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to major accidents and disasters and the ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Cumulative and Inter-related Effects Including the South Downs National Park

- 5.2.127. The ExA does not concur with ES Chapter 30 [REP6-165] in respect to inter-related effects, that the significance of effect from the Proposed Development from inter-related would be Negligible (Not Significant). This is because, as set out below, there are a number of topic areas where the significance of effects would be Minor Adverse (Not Significant), the ExA concludes that the inter-related effects should equally be Minor Adverse (Not Significant).
- 5.2.128. The ExA concurs with the Applicant's assertions in the CEA [APP-127 and APP-128] and concludes the significance of effect would be Negligible (Not Significant).
- 5.2.129. The ExA considers that while undoubtedly the construction of the Proposed Development would, both inter-related with other topics and cumulatively with other known and planned projects, cause some nuisance and disturbance on receptor points, they would be temporary only and limited to a specific time.
- 5.2.130. The ExA considers the effects of the Proposed Development upon the SDNP, taken as an entity and having regard to all topic areas discussed above in this Section of the Recommendation, to be Major Adverse (Significant) because of the effects of the WTGs.

- 5.2.131. However, the ExA concurs with the Applicant and the SDNPA that the National Park Enhancement and Furtherance Scheme, secured by Requirement 43 of the Recommended DCO, would adequately compensate for amongst other things, the significant adverse effects on the SDNP arising in respect of landscape, visual, ecological and cultural heritage and effects arising from the construction of the onshore cable corridor forming part of the authorised development. The ExA is thus satisfied that the LURA2023 test where proposals must seek to further the purposes of national landscapes, and accordingly the SDNP, has been met.
- 5.2.132. In respect to inter-related and cumulative matters, the ExA is satisfied that the Proposed Development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5 2011 and by other national and local policies and strategies and all other relevant legislation and there are no other important or relevant considerations. In respect to the SDNP, as with seascape, landscape and visual effects the ExA considers some conflict would occur with the NPS EN-1, EN-3 and where relevant EN-5 2011.
- 5.2.133. The ExA attaches a Little Negative weight to inter-related and cumulative effects of in the planning balance. Having regard to the mitigation secured by Requirement 43 of the Recommended DCO and taking into NPS EN-1 2011 on the proportionality of weight to be applied to any harm to landscapes, the ExA considers that the effect of the Proposed Development upon the SDNP attracts Moderate Negative weight in the planning balance.
- 5.2.134. Under the Transitional Arrangements, compliance with NPS EN-1, EN-3 and EN-5 2024 is not required. However, the ExA has had regard to it in reaching our conclusions on matters relating to inter-related and cumulative effects and to the SDNP. The ExA considers there to be no obvious reason why the Proposed Development should not be determined in accordance with the NPs EN-1, EN-3 and where relevant EN-5 2011.

Habitats Regulations Assessment

- 5.2.135. The ExA recommends to the Secretary of State that AEoI on kittiwake, guillemot and razorbill at the FFC SPA cannot be excluded.
- 5.2.136. In such circumstances, the Applicant's derogation case applies and an additional schedule (Schedule 17) has been added to the Recommended DCO, with an increase in ANS recommended from 5 to 10. NE has not by the close of the Examination approved of the wording of Schedule 17 and the Secretary of State may wish to seek further information from NE on whether it has now changed its position.
- 5.2.137. Subject to the Secretary of State being satisfied that either AEoI can be excluded, or that Schedule 17 provides for adequate mitigation and compensation for kittiwake, guillemot and razorbill species, the ExA advises that the Proposed Development would have no new relevant or important HRA issues or concerns.

5.3. ASSESSMENT AGAINST S104 OF THE PLANNING ACT 2008

- 5.3.1. The ExA has been mindful of the legal framework within which the Secretary of State must decide this application and has sought to explore and seek representations on the operation of s104 of the PA2008 and the planning balance.

- 5.3.2. S104(2) and s104(3) of the PA2008 require the Secretary of State to have regard to, and to decide the application in accordance with any NPS except to the extent that one or more of subsections (4) to (8) apply.
- 5.3.3. The ExA concludes that the NPS EN-1, EN-3 and EN-5 2011 sets out the need for additional energy in general and that subject to the detailed policies and protections within it, and the legal constraints set out in the PA2008, there is a presumption in favour of granting development consent for renewable energy that fall within the need for infrastructure established within the NPS EN-1, EN-3 and EN-5 2011.
- 5.3.4. The ExA considers that the Proposed Development meets the need as established in the NPS EN-1, EN-3 and EN-5 2011 and satisfies the tests of s104(2) and s104(3) of the PA2008 and accordingly should be determined as such.
- 5.3.5. S104(4), s104(5) and s104(6) of the PA2008 require the Secretary of State to have regard to, and to decide the application in accordance with any NPS and having regard to LIRs, unless the Proposed Development breaches any international obligation; any duty imposed on the Secretary of State by or under any enactment; or would be unlawful by any enactment.
- 5.3.6. All LIRs (see paragraph 1.10.4 of this Recommendation for the full list) expressed general support for the principal of the Proposed Development and no local authority or IP identified any specific potential conflict from the Proposed Development with any other legislation or obligation. Any outstanding concerns are capable of being resolved through the detailed design process and the discharge of the Requirements.
- 5.3.7. In respect to HRA matters, the ExA recommends that AEoI to the FFC SPA in respect to kittiwake, guillemot and razorbill cannot be excluded. During the Examination, the Applicant disagreed with NE's view that AEoI cannot be excluded, but prepared a derogation case should the Secretary of State disagree, which included Schedule 17 [REP6-111] to be inserted into the Recommended DCO. NE concurs with the need for Schedule 17 but at the close of the Examination, had not agreed its wording or the compensation quanta for nesting sites for breeding kittiwake pairs at the existing ANS at Gateshead, which the ExA is proposing to increase from 5 as prescribed in the final draft DCO [REP6-007], to 10 as set out in the Recommended DCO.
- 5.3.8. The ExA considers that subject to the insertion of Schedule 17, the Proposed Development would not adversely affect European sites, species or habitats, and that s104(4), s104(5) and s104(6) of the PA2008 would not apply. Equally, s104(8) is not considered to apply.
- 5.3.9. S104(7) of the PA2008 applies if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits. We have found that in most topic areas, the Proposed Development would have Little Negative planning effect because any negative effect would be offset by adequate mitigation which is secured in the Recommended DCO.
- 5.3.10. The need for the scheme, as identified in NPS EN-1, EN-3 and where relevant EN-5 2011 must be given Very Great Positive weight in the planning balance.
- 5.3.11. For the reasons set out in Section 3 of this Report, the ExA has identified no topic areas where Very Great or Great Negative weight in the planning balance applies.

- 5.3.12. The ExA considers that Moderate Negative weight to the planning balance should be applied to Seascape, Landscape and Visual effects and to the SDNP taken as a whole, primarily caused by the quantum and height of the proposed WTGs over the longer-term period.
- 5.3.13. The following topic areas are where the ExA considers a Little Negative weight in the planning balance should be applied primarily because of the short-term and temporary construction activities caused, although where stated there would be some operational effects:
- Offshore and Intertidal Ornithology EIA related (includes longer-term operational effects on the GBBG).
 - Marine Mammals.
 - Fish and Shellfish.
 - Coastal Processes and Benthic Subtidal and Intertidal Ecology.
 - Commercial Fisheries.
 - Shipping and Navigation (primarily operational effects).
 - Aviation (primarily operational effects).
 - Terrestrial Ecology.
 - Historic Environment (includes longer-term setting to heritage assets from the permanent structures).
 - Traffic and Access.
 - Air Quality.
 - Soils and Agriculture.
 - Mineral Safeguarding and Ground Conditions.
 - Population and Human Health.
 - Noise and Vibration.
 - Cumulative and Inter-Related Effects.
- 5.3.14. Also set out in Section 3 of this Report, the ExA has identified the following where there are no residual effects or issues which affect the planning balance:
- Marine Archaeology.
 - Water Environment.
 - Socio-Economics (where the positive weight to be applied to the contribution to the national economy is balanced by the negative effect on recreational activities).
 - Waste Management.
 - Good Design.
 - GHG Emissions.
 - Major Accidents and Disasters.
- 5.3.15. In order for the Proposed Development to fail s104(7) of the PA2008, the identified Moderate and Little Negative weight attached to the elements of the Proposed Development identified in paragraphs 5.3.12 and 5.3.13 above would, either individually or cumulatively, need to be of such importance that they are capable of outweighing the Very Great Positive weight to be attached to the need for the Proposed Development as identified in NPS EN-1 2011. , and as being of CNP as identified in NPS EN-1 2024.
- 5.3.16. The ExA recognises that the construction of the Proposed Development, even accounting for mitigation and compensation identified in the Recommended DCO would nevertheless cause some harm and would attract Moderate Negative weight in respect to Seascape, Landscape and Visual and on the SDNP, and Little

Negative weight on other matters in the planning balance. However, the ExA considers that this harm even taken cumulatively would not be capable of outweighing the Very Great Positive weight from the need for the Proposed Development as set out in NPS EN-1, EN-3 and where relevant EN-5 2011.

5.3.17. The ExA concludes that, on the planning merits, the adverse effects do not outweigh the benefits of the development. In reaching this decision, the ExA considers:

- That for the amount of mineral sterilisation that would occur, there is an overriding need for the Project that outweighs the safeguarding of minerals and that the Applicant has demonstrated that prior extraction is not practicable or environmentally feasible for the remaining volume of mineral (as required by Joint Minerals Local Plan Policy M9(b)).
- That paragraph 208 of the NPPF is satisfied, where the public benefits outweigh the identified less than substantial harm to heritage assets, again taken individually and cumulatively. Accordingly, s104(7) of the PA2008 does not apply. The ExA also considers s104(8) is not applicable.
- The tests set out in the LURA2023 where proposals must seek to further the purposes of national landscapes has been met.

5.3.18. In conclusion s104(7) does not apply, and the ExA considers that the Secretary of State can determine the Proposed Development in accordance with s104(2) and 104(3) of the PA2008.

6. LAND RIGHTS

6.1. INTRODUCTION

- 6.1.1. This Section sets out the relevant legislative requirements relating to CA and TP, describes the request by the Applicant for CA and TP powers, explains the purposes for which land would be required, describes the examination of the CA and TP case and gives the ExA's conclusions and recommendations.

Land Rights Tracker

- 6.1.2. This Examination undertook a new approach and requested from the Applicant [PD-005 and PD-006] a LRT, to be submitted for the Pre-Examination deadline and then at various deadlines during the Examination.
- 6.1.3. The Rule 6 letter [PD-006] set out the ExA reasons for requesting the LRT. This was to provide a comprehensive account of the status of land rights not yet agreed which would mean that the ExA would receive regular updates and final versions of the LRT at the close of the examination. This format would enable the data to be sorted for accurate referencing and review.
- 6.1.4. In so doing, the LRT provides an audit trail for all parties, and relevant and outstanding matters can be more readily and easily referenced. This allows for the ExA and the Secretary of State to have open a useful reference table of the positions of the APs and plots involved and be able to sort them into whichever order was needed, for example, those APs with signed agreements or signed Heads of Terms (HoTs). The Rule 6 letter [PD-006] also provided an example of the format and fields the ExA was expecting.
- 6.1.5. The Applicant submitted a draft LRT at the Pre-Examination Procedural Deadline [PEPD-016]. The draft was discussed at the PM [EV1-001] under item 4 Procedural Decisions. The ExA referred the applicant back to the Rule 6 request because the first submitted version failed to meet the ExA objective of providing information on all requested land rights not yet agreed in a simple tabular format allowing the information to be searched easily by both the ExA and ultimately the Secretary of State. Considering these comments the Applicant was asked to revisit its submission and resubmit the LRT at Deadline 2.
- 6.1.6. The LRT submitted at Deadline 2 [REP2-007] met the ExA's requirements and contains the following fields:
- Unique Reference Number (URN).
 - Name of Land Interest.
 - Agent/ Representative.
 - HoTs Status.
 - Land Agreement Status.
 - Protective Provision (PP) and Side Agreement (SA) Status.
 - Status of Objection.
 - Comments on Status of PPs / SAs.
 - Summary Comments on Status of Objection/ Land Negotiation.
 - Last Updated.
 - BoR Plot References.
 - Interest.
 - Type of Acquisition Relating to Specified Plot(s).

- Works Number(s) and Reason for Acquisition of Rights.
- Land Subject to Special Consideration (Crown, Allotment, National Trust (NT) etc).
- Land Subject to Special Consideration BoR Plots/ Type.
- Is the AP a SU and is the Land Operational.
- IP/ AP Ref. No.
- RR Ref No.
- WR Ref No.
- Other Doc Ref No.
- Applicant's RR and WR Response Ref Nos.

6.1.7. All of the information above is normally held within the Application and Examination but spread across a large number of different locations.

6.1.8. The LRT submitted at all subsequent Deadlines [REP3-010, REP4 –011 and REP5-010] and final Deadline 6 [REP6-018] became a key document in the Examination.

6.2. LEGISLATIVE REQUIREMENTS

6.2.1. The application includes a request for CA and TP powers. The source of those powers is contained in the Applicant's preferred draft DCO submitted at the end of the Examination [REP6-007]. All further references to the draft DCO in this Chapter relate to this version.

6.2.2. The CA powers can only be granted if the conditions set out in s122 and s123 of the PA2008, together with relevant guidance in "Guidance Related to Procedures for the Compulsory Acquisition of Land", DCLG, September 2013 (the former Department for Communities and Local Government) (CA Guidance) are met.

6.2.3. Section 122(2) of PA2008 states that the land subject to CA must be required for the development to which the development consent relates or must be required to facilitate or be incidental to the development. In respect of land required for the development, the CA Guidance sets out that the land to be taken must be no more than is reasonably required for the purposes of the development, is no more than is reasonably necessary and is proportionate. Section 122(2)(c) refers to replacement land which is to be given in exchange of order land under s131 or s132 the CA of land or rights over commons, open spaces etc. This does not apply to this case.

6.2.4. Section 122(3) of PA2008 requires that there must be a compelling case in the public interest to acquire the land compulsorily. The CA Guidance states at paragraphs 12 and 13 that the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired. In balancing public interest against private loss, CA must be justified in its own right.

6.2.5. Section 123 of PA2008 relates to the land which authorisation of CA can cover. S123(1) permits CA if one of the following conditions in subsections (2) to (4) is met: (2) the application for the order included a request for CA; (3) that all persons with an interest in the land consent to the inclusion of the provision; or (4) the prescribed procedure has been followed in relation to the land. In the case of the current application the first of these conditions is met. The CA Guidance also sets out a number of general considerations to be addressed when CA powers are sought. These are that:

- All reasonable alternatives to CA (including modifications to the development) have been explored.
- The proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate.
- The Applicant has a clear idea of how the land which it is proposing to acquire will be used.
- There is a reasonable prospect of the requisite funds becoming available.
- The purposes for which the CA of land are included in the application are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected.

- 6.2.6. Finally, paragraph 25 of the CA Guidance states that applicants should seek to acquire land by negotiation wherever practicable.
- 6.2.7. S127 of PA2008 applies to land acquired by a SU for the purpose of their undertaking where a representation is made about the application for the DCO and not withdrawn and as a result of that representation the Secretary of State is satisfied that the land is used for the purposes of carrying on the SUs' undertaking, or an interest in the land is held for those purposes. S127(5) states that an order granting development consent may include provision authorising the creation of a new right over SUs' land providing that it can be done without serious detriment to the carrying out of the undertaking or any detriment can be made good by the undertaker by the use of other land belonging to or available for acquisition by the SU.
- 6.2.8. S130 of PA2008 relates to NT land. S131 of PA2008 applies to the CA of common land, open space or fuel or field garden allotments and s132 applies to the CA of rights over such land. Such land and NT land is defined as 'special category land' under Regulation 2 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations). In the case of s130 PA2008 states that an order granting development consent would be subject to special parliamentary procedure (SPP) if the Secretary of State is satisfied that one of the relevant subsections apply. In the case of s131 and s132 PA2008 states that an order granting development consent would be subject to SPP unless the Secretary of State is satisfied that one of the relevant subsections applies and that fact is recorded in the Order. Special Category Land is considered later in this section and is relevant for s132 of PA2008 only.
- 6.2.9. Section 135 of PA2008 provides that, an order granting development consent may include provision authorising the CA of an interest in Crown land only: i) if the interest is for the time being held otherwise than by or on behalf of the Crown; and ii) if the appropriate Crown authority consents to the acquisition.
- 6.2.10. S138 of PA2008 provides for an order to include provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus of SUs only if the Secretary of State is satisfied that such actions are necessary for the purposes of carrying out the development to which the order relates.
- 6.2.11. Further to Part 1 of Schedule 5 to PA2008, TP powers are capable of being within the scope of a DCO. PA2008 and the CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as for CA powers because, by definition, such powers do not seek to permanently deprive or amend a person's interests in land. However, they must be justifiable and compatible with human rights tests as discussed below.

- 6.2.12. The Neighbourhood Planning Act 2017 (NPA2017) in general terms provides enhancements to the rights of persons subject to TP, with a view to ensuring that they have equivalent or proportionate rights to notice and relevant compensation to those already available to APs subject to CA. However, NPA2017 has not yet commenced and has been disapplied in the final version of the draft DCO [REP6-007]. Previous Secretary of States have accepted this disapplication.

6.3. THE REQUEST FOR CA AND TP POWERS

- 6.3.1. The application draft DCO [APP-019] and all subsequent versions submitted by the Applicant up to the latest draft DCO (Revision H) [REP6-007] (refer to Table A8 of Appendix A of this Recommendation) submitted at the end of the Examination include provisions intended to authorise the CA of land and rights over land. The application therefore included a request for CA as per s123(2) of PA2008. Powers for the TP of land were also sought.
- 6.3.2. Accordingly, the application was accompanied by a Book of Reference (BoR) [APP-026], a Statement of Reasons (SoR) [APP-021], a Funding Statement (FS) [APP-025], Land Plans Onshore [APP-007], Offshore Works Plans [APP-008], Onshore Works Plans [APP-009], Offshore Crown Land Plan [APP-010], Special Category Land Plan [APP-011], Access, Rights of Way and Street Plans [APP-012], Open Access Land Plan [APP-014], and Onshore Crown Land Plan [APP-015]. Taken together, these documents describe the land sought by the Applicant together with the reasons why the land is required and the basis under which compensation would be funded.
- 6.3.3. The Examination and the Applicant's due diligence processes led to changes to some of this documentation. By the close of the Examination, the most up-to date versions were as follows:
- BoR (Revision D) submitted at Deadline 6 [REP6-016].
 - SoR (Revision C) submitted at Deadline 6 [REP6-015].
 - FS (Revision B) submitted at Deadline 4 [REP4-009].
 - Land Plans Onshore (Revision C) [AS-025].
 - Offshore Works Plans (Revision A) [APP-008].
 - Onshore Works Plans (Revision C) [AS-026].
 - Special Category Land Plan (Revision C) [AS-027].
 - Access, Rights of Way and Street Plans (Revision C) submitted at Deadline 6 [REP6-004].
 - Open Access Land Plan (Revision A) [APP-014].
 - Onshore Crown Land Plan (Revision D) submitted at Deadline 6 [REP6-006].
- 6.3.4. All references to these documents in this Section from this point on should be read as references to the latest revisions cited above. It should be particularly noted that all Land plan plot references employed in this Section are correct as per the most recently submitted version [AS-025].
- 6.3.5. In addition to the above documents, the Applicant provided a BoR Schedule of Changes and an updated LRT. Both were updated during the examination with the final versions submitted at Deadline 6 [REP6-016 and REP6-018] respectively.
- 6.3.6. Land over which CA and / or TP powers are sought is referred to in this Chapter as the Order land.

Proposed Changes

- 6.3.7. The Applicant provided the ExA with notice of the intention to submit a request to make changes to the application in a letter dated 27 June 2024 [AS-020].
- 6.3.8. The Applicant's letter set out nine changes to the application, which are summarised below:
- Reduction in the Order limits close to the Ancient Woodland near the Bolney substation (Plot 34/160 (A)).
 - Reduction in the Order limits close to the Ancient Woodland at Oakendene (Plot 33/1) (B).
 - Reduction in the Order limits close to the Ancient Woodland at Sweethill Farm (Plot 26/3) (C).
 - Reduction in the Order limits close to the Ancient Woodland at Michelgrove Park (Plot 8/4) (D).
 - Reduction in the Order limits close to the Ancient Woodland at the Ancleggan land (Plot 34/19) (E).
 - Reclassification of land within the buffer zone of the Ancient Woodland at Decoy Lane from Work No.9 (onshore cable route) to Work No.14 (construction and operational access) (Plot 7/1) (F).
 - Reclassification of the westernmost part of Plot 19/2 from Work No.9 (onshore cable route (OCR)) to Work No.12 (temporary duct stringing) and to amend the Land plans of this section of land from the CA of rights to TP only (Plot 19/2) (G).
 - Reclassification of land adjacent to Wineham Lane from Work No.19 (onshore connection works) to Work No.13 (temporary construction access) and to amend the Land plans of these sections of land from the CA of rights to TP only (Plots 34/25 and 34/31) (H part 1).
 - Reclassification of land on the eastern side of the National Grid substation from Work No.17 (environmental mitigation) to Work No.13 (temporary construction access) and to amend the Land plans of the majority section of this land from the CA of rights to TP only (Plots 34/27 and 34/28) (H Part 2).
- 6.3.9. The ExA considered the Planning Inspectorate's Advice Note 16 Guidance on changes to an application (AN16), the CA Regulations and the guidance published in the Planning Act 2008: Examination stage for Nationally Significant Infrastructure Projects dated April 2024.
- 6.3.10. Paragraph 2.1 of AN16 advises that on receipt of a request to make a change to the application, the ExA must initially consider whether the development being proposed is in substance the same as the development which was originally applied for.
- 6.3.11. In respect to proposed changes A to G and based purely upon the Applicant's information provided on 27 June 2024 [AS-020], the ExA agreed with the Applicant that the sought changes would amount to a reduction in land take required, and/or a reduction in the use of the land. As this would not likely raise any materially new or different issues to those already before the Examination, the ExA was minded to accept the Applicant's view that proposed changes A to G would not lead to the Proposed Development being different in nature or substance to that which was originally applied for. The ExA also agreed that additional consultation would, not be required.

- 6.3.12. In respect to proposed change H (parts 1 and 2), the ExA could not at that stage conclude the same, because the following was unclear:
- Why it was proposed that some of the land currently classified as Work No. 19 (onshore connection works (including construction and operational access)) is re-classified as Work No. 13 (temporary construction access) and how the proposed limits of each were defined.
 - Whether a temporary construction access was proposed from Bob Lane and if so, whether this had been previously assessed in the application.
 - Whether the proposed mitigation proposed for Plots 34/26 and 34/27 could be accommodated satisfactorily within the revised area proposed for Work No.17 (environmental mitigation).
 - What National Grid's views on the proposed changes would be including the changes to the CA powers sought.
- 6.3.13. In addition, the ExA requested further clarification on proposals for Plots 34/26 and 34/27 and a letter to accompany the formal change request from National Grid confirming its support and clarifying its position on any outstanding concerns [PD-015].
- 6.3.14. The Applicant subsequently submitted a formal change request on Monday 22 July 2024 [AS-024 to AS-046] reflecting the changes proposed in its notice of intention.
- 6.3.15. The ExA having fully considered: paragraphs 109 to 115 of the DCLG Guidance 'Planning Act 2008: Examination of Applications for Development Consent' and AN16; responses received at Deadline 5 from IPs [REP5-153 and REP5-187] in response to the Applicant's change request and the Applicant's response to the ExA's requests with respect to change H (parts 1 and 2) made a Procedural Decision to accept the Changes into the Examination [PD-018].
- 6.4. THE PURPOSE FOR WHICH LAND IS REQUIRED**
- 6.4.1. The relevant Order land and purposes for which the CA and TP powers are required are set out in the BoR [REP6-016] and SoR [REP6-015] and shown in the Land Plan Onshore [AS-025].
- 6.4.2. CA is sought for land that would be required or used permanently for the construction, operation and maintenance of the Proposed Development. The main powers authorising the CA of land are contained in Article 23 (compulsory acquisition of land). This Article would allow the undertaker to acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it, subject to the provisions of Article 24 (time limit for exercise of authority to acquire land compulsorily), Article 25 (compulsory acquisition of rights and imposition of restrictive covenants), and Article 33 (temporary use of land for carrying out the authorised project).
- 6.4.3. Article 24 would limit the time allowed for exercising CA (and TP) powers to seven years from the day the Order is made.
- 6.4.4. Article 25 would limit the undertaker's powers of CA to acquire only the rights or impose only the restrictive covenants specified in Schedule 7 of the Recommended DCO relating to the Order land also specified in this schedule.

- 6.4.5. Article 33 would allow the undertaker to enter on and take possession of land set out in Schedule 9 to the Recommended DCO, to facilitate the construction of the authorised development. The article would time limit such possession to one year after the date of completion of the relevant part of the authorised development. Article 33 would also prevent the undertaker from acquiring this land compulsorily.
- 6.4.6. Article 53 makes provision to prevent the Applicant exercising CA powers until guarantees or alternative forms of security in respect of the liabilities to pay compensation are in place and have been approved.
- 6.4.7. The Land Plans Onshore [AS-025] reflect the above and identify the following:
- Land shaded pink – permanent CA of land.
 - Land shaded blue – CA of rights and TP of land.
 - Land shaded green – TP of land only.
- 6.4.8. Other CA powers sought by the Applicant include Article 26 which provides for the extinguishment of all existing private rights over land subject to CA and suspension of those rights over land subject to TP, as necessary, and Article 31 which allows the Applicant to acquire compulsorily so much of, or such rights in, the subsoil or the airspace over the land as required. Article 32 would allow the Applicant to enter on, appropriate and use land above and below streets in the Order limits without having to acquire any part of the street or easement right in it.
- 6.4.9. Article 34 provides for the Applicant to take TP of land within the Order limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose. This general power would be allowed during the period which the authorised development exports electricity to the national electricity transmission network. However, any TP would be time limited for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.
- 6.4.10. Article 36 and Article 37 address the CA of SU's land, including powers to remove or reposition apparatus belonging to SUs.
- 6.4.11. In Crown land, the CA of interests which are for the time being held otherwise than by or on behalf of the Crown is sought (subject to s135 of PA2008). Part 4 of the BoR [REP6-016] identifies the plots within which the Crown has an interest, and these are shown on the Crown Land Plans [REP6-006]. The BoR identifies that interests in such land are held by the following relevant Crown authorities: The King's Most Excellent Majesty in Right of His Crown (TCE); Forestry Commission; and DfT. Article 50 includes a provision for the CA of Crown interests.
- 6.4.12. The route of the Proposed Development would also require the CA of rights and TP of land which falls into 'special category land' (defined as land forming part of NT land, a common, open space, or fuel or field garden allotment). Part 5 of the BoR and the Special Category Land Plan [AS-027] identifies the plots that fall within this category. These plots are identified / defined in the BoR as: 'The National Trust for Places of Historic Interest or Natural Beauty' (subject to s130 of PA2008); 'open space'; 'allotments'; and 'common land' (subject to s132 and s139 of PA2008). Article 39 refers to 'special category land'. S131 of PA2008 is not engaged as only CA of rights is proposed.

6.5. EXAMINATION OF THE CA AND TP CASE

- 6.5.1. The examination of the application included consideration of all submitted written material relevant to CA and TP with the processes involved described below.

Written Process

- 6.5.2. APs or potentially affected persons by CA or TP including SUs who made RRs are listed in the LRT [REP6-018]. The LRT [REP6-018] also lists subsequent WRs made by APs and other relevant documents.
- 6.5.3. ExA WQ [PD-009] and FWQ [PD-012] included questions to clarify and test the Applicant's case for CA and TP.
- 6.5.4. As well as providing updated LRTs at each Deadline the Applicant also provided Land Engagement Reports (LER) for certain APs at Deadline 5 [REP5-013 to REP5-022] and Deadline 6 [REP6-021 to REP6-108]. These LERs were not requested by the ExA but were a response to the ExA after it expressed concern over the lack of progress of land negotiations at the end of CAH1. The LERs contain the following fields:
- Landowner/ land interest name.
 - Agent.
 - Property name.
 - Land interests sought.
 - Unique reference number in the LRT.
 - RR and WR references;
 - Plot numbers.
 - Current status of negotiations.
 - A log of negotiations for the voluntary acquisition of rights prior to CAH1.
 - A log of negotiations for the voluntary acquisition of rights after CAH1.
 - A log of landowner engagement (2021 to 2024).
 - Alternative routes reviewed at the land interest's (and landowner's) request;
 - Draft DCO boundary refinements.
 - Impact on land interest.
 - Implications of impact.
 - Proposed mitigation.
 - Outstanding issues delaying conclusion of voluntary agreement.
 - Negotiations/ contact summary (date and method of contact).

Hearings

- 6.5.5. A CAH was held on the morning of 17 May 2024 and all day on 21 May 2024 (CAH1) [REP4-073].

Site Inspection

- 6.5.6. USIs took place between the 11 and 13 November [EV1-001] and between 11 and 13 June [EV1-002]. These enabled the ExA to view much of the land subject to CA and TP proposals from public highways and PRow. The ExA was also able to gain an appreciation of the general extent of land being sought to be acquired permanently and/ or possessed temporarily during the USI.
- 6.5.7. A further opportunity for the ExA to view more of the land subject to CA and TP proposals was provided by the ASI held on 14 May [EV7-001].

General Consideration

- 6.5.8. The Applicant's general case for CA and TP is set out in the SoR [REP6-015]. The Applicant considers that:
- The conditions in s122 of PA2008 are met and the tests in the CA Guidance are satisfied.
 - All of the land subject to CA and TP powers is necessary to construct, operate, maintain and mitigate the Proposed Development and is necessary to achieve its objectives.
 - The extent of the land sought for CA and TP is reasonable and proportionate and is no more than is reasonably required for the purposes of the Proposed Development.
 - The Applicant has a clear idea of how it intends to use the land which would be subject to CA and TP.
 - All reasonable alternatives to CA (including modifications to the Proposed Development) have been explored.
 - The Applicant has engaged with all APs with a view to acquiring land interests by agreement and is continuing this process.
 - There is the necessary funding available.
 - The exercise of the CA and TP powers that are sought is necessary and proportionate to the extent that interference with private land and rights is required.
 - In the absence of CA and TP powers, it would not be possible to proceed with the Proposed Development, and the public benefits of the Proposed Development would not be realised.
 - There is a compelling case in the public interest to include the CA and TP powers sought by the Applicant in the Recommended DCO.
 - The interference with human rights is both proportionate and justified.
- 6.5.9. ExA WQs [PD-009] included questions relevant to the Applicant's case for CA and TP, including: compliance with the BoR and the DCLG guidance 'Planning Act 2008: procedures for the compulsory acquisition of land' (September 2013) (DCLG guidance); accuracy of the BoR, SoR, LRT and Land plans; steps the Applicant was taking to identify any persons having interest in land, including any rights over unregistered land; any planned changes to the application which might engage The CA Regulations; the case for CA; professional fees; the Applicant's approach to the investigation of suggestions/ requests made by APs to reduce or mitigate the impact of the Proposed Development on their interests; progress with land rights negotiations and justification of the need for the acquisition / possession of specific plots of land.
- 6.5.10. ExA FWQs [PD-012] included additional questions relevant to the Applicant's case for CA and TP, including requesting a summary of all efforts to acquire the land required for the Proposed Development by negotiation since the close of CAH1; an update on progress with land rights negotiations and the implications of removing NGET plots from the BoR.
- 6.5.11. At CAH1 [REP4-073] the ExA:
- Explored further the Applicant's case for CA and TP including funding;
 - Received an update from the Applicant on crown land and interests, special category land and SU's.

- Led a discussion on the specific powers sought in Part 5 of the draft DCO at the time of the Hearing about restrictive covenants.
- Heard and orally examined objections from APs.
- Asked the Applicant to justify the need for and/ or size of several individual plots such as the need for rights over a rectangular area of land on the western side of plot 19/2 and the width of Plots 5/13, 6/3 and 8/1 to 8/4.

6.5.12. The Applicant's consideration of alternatives is provided in ES Volume 2 Chapter 3: Alternatives [APP-044] and provides the scheme evolution, including the options considered, and the reasons for their rejection in favour of the preferred option. The Consultation Report [APP-027, APP-029, APP-030, AS-045 and REP1-003] and the Planning Statement [REP6-113] also provide information on alternatives. Section 3 of this Recommendation considers site selection and alternatives in greater detail and concludes the Applicant has considered all reasonable alternatives to each element of the Proposed Development in the ES [APP-044], and that the scheme represents the most appropriate location having regard to environmental and technical constraints of the proposed and other sites considered. None of the alternative options would obviate the need for CA and TP powers.

6.5.13. The SoR [REP6-016] provides the justification for the CA or TP for each plot identified on the Land Plans Onshore [AS-025] and the Works Plan [AS-026] demonstrates that the Applicant has a clear idea of how it intends to use the land which would be subject to CA and TP.

6.5.14. In terms of demonstrating a compelling case in the public interest for the acquisition of land and rights, the Applicant highlights in the SoR [REP6-015] and Planning Statement [REP6-113] that the Proposed Development:

- Would make a significant contribution to meeting national need for energy infrastructure, including of the renewable type proposed, in accordance with policy set out in NPS EN-1.
- Would contribute to the delivery of the 30GW of renewable energy envisaged in NPS EN-1 and the ambition to deliver 50GW of offshore wind by 2030 as set out in the UK Government's April 2022 British Energy Security Strategy (BESS).
- Would have a lifetime GHG emissions saving of 35,901ktCO₂e and would contribute to meeting national, European and global targets on carbon dioxide reduction in line with the CCA2008.
- Would contribute to meeting policy objectives for the UK to transition to a lower carbon economy.
- Would contribute to mitigating climate change, with subsequent benefits for biodiversity (the Applicant has made a commitment to deliver BNG of at least 10% for all onshore and intertidal (above the low water mark) habitats subject to permanent or temporary losses resulting from the construction and operation of the Proposed Development).
- Would support the economic priorities of the UK Government through the provision of green jobs (£2.87bn (2019 prices) capital investment, 4,040 FTE employees during construction, 40 to 50 FTE direct employees and 500 FTE supply chain employees during operation and £4.1M/ annum generated by Sussex based firms).
- Would provide landscape enhancements to offset harm to designated landscapes (including the SDNP).

6.5.15. However, there were two key issues in the Examination related to the Applicant's case for CA / TP:

- Compliance with 122(2) and DCLG Guidance.
- The acquisition of land interests and/ or TP powers by agreement.

Compliance with 122(2) and DCLG Guidance and the Order Limits

6.5.16. Section 122(2) of PA2008 states that the land subject to CA must be required for the development to which the development consent relates or must be required to facilitate or be incidental to the development. The CA Guidance states that the land to be taken must be no more than is reasonably required for the purposes of the development, is no more than is reasonably necessary and is proportionate.

6.5.17. ES Volume 2, Chapter 4: The Proposed Development [REP6-171], states in paragraph 4.5.8 that between landfall at Climping and the proposed new onshore substation at Oakendene:

“The standard temporary construction corridor will be up to 40m wide and consist of the trenches, excavated material and a temporary construction haul road”.

It also explains that:

“The temporary construction corridor may require widening beyond the standard width to allow enough space for access / equipment at trenchless crossings and to avoid obstacles”.

6.5.18. For the connection from the proposed new onshore substation at Oakendene to the proposed connection to the National Grid Bolney substation where two cables are required paragraph 4.5.11 states that: *“the corridor will not exceed 30m in width”.*

6.5.19. However, the width of the Order limits shown in Land Plans Onshore [AS-025] along the line of the OCR over which the Applicant proposes taking CA and TP powers is significantly wider in many locations than these proposed temporary construction widths (e.g. Plots 5/13, 6/3, 8/1 to 8/4, 11/1 to 11/4, 14/1, 14/6, 28/2, 32/16, 33/1, 33/24, 33/26, 34/3 and 34/16 Sheets 5, 6, 8, 11, 14, 28, 32, 33 and 34 Land Plans Onshore [AS-025])

6.5.20. The need/ justification for the Applicant to seek CA and TP powers over large areas of land outside the stated “standard” Onshore Cable Corridor (OCC) temporary construction widths, was raised by a large number of APs in their RRs and WRs, including:

- Ancleggan Ltd [RR-012].
- Henry Adams o.b.o Alan David Lewhellin Griffiths and Janice Elizabeth Griffiths [RR-003].
- Batcheller Monkhouse o.b.o Mrs Nicola Crichton-Brown [RR-258].
- Charles Roderick Worsley [RR-059].
- Savills UK Ltd o.b.o Park Estate Trust [RR-022].
- Lester Aldridge LLP o.b.o Green Properties [RR-138].
- Batcheller Monkhouse o.b.o Mr D H Dumbrell, Mrs L Dumbrell & Mr R Dumbrell [RR-256].
- Batcheller Monkhouse o.b.o Mr Mark Cleaver and Mrs Karen Cleaver [RR-257].
- Henry Adams LLP o.b.o Mssrs Hutchings [RR-259].
- Batcheller Monkhouse o.b.o Patrick John Marcel Hutchinson [RR-289].
- The Baird Farming Partnership [RR-387].

6.5.21. The ExA explored this issue through its WQs and during CAH1.

6.5.22. In its WQs [PD-009] (question LR1.9), the ExA asked the Applicant to provide for all locations that the proposed acquisition of land rights for the OCC exceeded 40m:

- A list of all such locations.
- The justification at each location for the increase in width.
- Where this is due to uncertainties in design and or ground conditions, how this is accounted for in considering the impact on APs and their interests, and the balancing exercise between public benefit and private loss.

6.5.23. In its response [REP3-051] the Applicant confirmed that:

- The typical OCC is proposed to be 40m for open cut sections of the cable corridor and that this had been assessed in the ES as described in paragraph 4.5.8 of Volume 2, Chapter 4 Proposed Development [APP-045] and illustrated in figure 4-19.
- The connection from the onshore substation at Oakendene to the National Grid Bolney substation, where two cables are required, open cut sections of the corridor would not exceed 30m in width as per paragraph 4.5.10.
- A typical permanent corridor easement is likely to be 20m, but this may vary according to local conditions. A maximum permanent corridor of 25m (excluding HDD crossing locations) has been assessed in the ES as a reasonable worst-case scenario (footnote to Table 8-1 of the Cable and Grid Connection Statement [APP-034]).

6.5.24. The Applicant went on to explain the reason for the proposed width of the Order limits which included the following:

- Enough flexibility to accommodate the OCC following the results of ground investigation surveys, detailed cable route design, and pre-construction environmental surveys and mitigation.
- Space to accommodate trenchless crossing compounds 50m x 75m and 120m x 100m as described and secured in Section 4.3 in the OCoCP [PEPD-033] and by R22 of the draft DCO [REP2-002].
- Areas where soil storage is required outside of the flood plain.
- Sufficient space to accommodate the works at the landfall of the offshore cable.

6.5.25. The Applicant also provided the locations along the OCR where these factors had influenced the Order limits. In particular, two sections of the OCR at Michelgrove (Plots 11/1 to 11/4, Sheet 11, Land Plans Onshore [AS-025]) and Sullington Hill (Plots 15/1, 15/2, 19/1 and 19/2, Sheets 15 and 19, Land Plans Onshore [AS-025]) where the presence of further constraints and uncertainty in ground conditions result in a particularly enlarged area within the Order limits were highlighted.

6.5.26. Regarding the potential impact of this approach on APs and their interests the Applicant stated that it:

“intends to exercise the order powers in a proportionate manner which will minimise the extent of land over which permanent rights will be required. Construction of the Proposed Development will be facilitated by temporary possession powers wherever practicable to enable the Applicant to take possession of the wider circa 40m OCC and then only exercise permanent CA powers over the narrower circa 20m permanent easement corridor. Land which is no longer required for the Proposed Development after construction has completed will be reinstated in accordance with Section 2.15 of the Outline Construction Method Statement [APP-255] and possession will be returned to the landowner”.

6.5.27. The consideration and balancing of impacts on private interests held by APs by the Applicant has taken into account:

- The objective of undertaking further survey and design work to identify a narrower onshore construction corridor before construction commences.
- The nature of the likely construction works required and likely impacts on land use including requirements and impacts from haul roads, trenchless crossing compounds and soil storage areas.
- The likely length of the construction works.
- Mitigation measures set out in the OCoCP [PEPD-033] and Commitments Register [REP1-015] and the residual ability to continue operations and management.

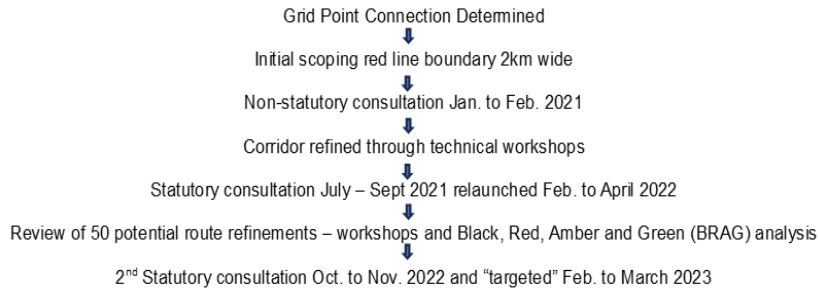
6.5.28. At CAH1 [REP4-073], the ExA asked the Applicant to explain in detail (with the use of specific plot examples and reference to the draft DCO, at that point the Deadline 3 version [REP3-003]), how, starting with the Order limits the Proposed Development would be constructed with permanent CA powers only being exercised over the minimum land required (Agenda Item I).

6.5.29. Following a discussion on this item at the Hearing, the ExA asked the Applicant to provide a detailed note setting out how the Order limits had been determined and how the Proposed Development would be constructed with CA powers only being exercised over the minimum land required, referencing the relevant Articles in the draft DCO [REP3-003 and EV6-012, action point 1].

The Applicant's response provided in [REP4-074, Table 2.2] was summarised by the ExA for clarity and ease of reference in Figure 16 below. At the request of the ExA under Rule 17 of the Infrastructure Planning (Examination Procedure) 2010 [PD-017] the Applicant confirmed the accuracy of the Figure at Deadline 6 [REP6-275].

Figure 16 – Land Rights Flow Chart

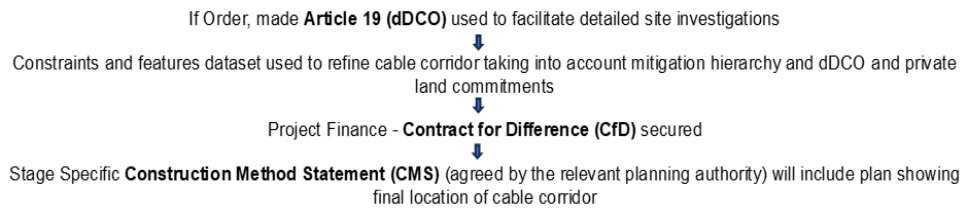
Pre-application



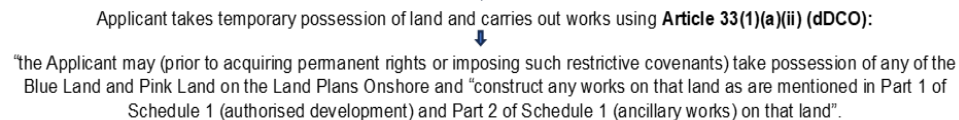
Application/ Examination

Draft DCO (dDCO) limits in application – Onshore Works Plans show limits for works in **Schedule 1** and Onshore Land Plans show limits for corresponding land rights **Article 25 and Schedule 7**.

Post Consent



Construction



Permanent Acquisition Rights

Once installation of the cable complete, "as built" plans prepared to show the permanent cable easement comprising the cable and a protective buffer zone (20 to 25m). Plan shared with the landowners and forms basis of the 99-year voluntary deeds of grant for the easement or the compulsory acquisition (**Articles 23 and 25, dDCO**)

Return & Reinstatement

Wider construction corridor land no longer required once construction has completed, to be reinstated in accordance with **Requirement 22, Outline Soils Management Plan (OSMP)** and **Requirement 12, Outline Landscape and Ecology Management Plan (OLEMP)** and returned to the landowner, as required by **Articles 33(5) and 33(6) (dDCO)**.

- 6.5.30. At the pre-application stage the Applicant having determined the National Grid Connection point, scoped out an initial red line boundary for the proposed OCC approximately 2 km wide to inform a non-statutory consultation in January and February of 2021. The results of the consultation and technical workshops were used to refine the corridor in advance of statutory consultation in July to September 2021 and February to April 2022. Following statutory consultation, 50 potential route

refinements were reviewed during further workshops and through the use of black, red, amber and green (BRAG) analysis which looked at the strengths and weaknesses of each. The results of a second statutory consultation in October to November 2022 followed by a more targeted consultation in February to March 2023 were then used to define the draft DCO [REP6-007] limits in the Application.

- 6.5.31. The Onshore Work Plans [AS-026] show the proposed limits for the works in Schedule 1 of the draft DCO [REP6-007] and the Onshore Land Plans [AS-025] show the proposed limits for the corresponding land rights in Article 25 and Schedule 7 of the draft DCO [REP6-007].
- 6.5.32. If the DCO was to be made, Article 19 (Authority to survey and investigate the land onshore) of the draft DCO [REP6-007] would be used to facilitate detailed site investigations and the resulting constraints and features database used to refine the OCC taking into account the mitigation hierarchy and draft DCO [REP6-007] and land commitments.
- 6.5.33. After securing project finance through the Contracts for Difference process, stage specific Construction Method Statements would be submitted to the RPAs including plans showing the final location of the OCC.
- 6.5.34. During the construction stage of the Proposed Development the Applicant would take temporary possession of land and carryout the work using Article 33(1)(a) of the draft DCO [REP6-007]. Once the cable had been installed “as built” plans would be prepared and shared with landowners as the basis of the voluntary deed of grant for the easement or the CA, Articles 23 and 25 of the draft DCO [REP6-007].
- 6.5.35. Land no longer required once construction had been completed would be reinstated in accordance with OSMF [REP3-027] and OLEMP [REP6-212] and returned to the landowner as required by Articles 33(5) and 33(6) of the draft DCO [REP6-007].
- 6.5.36. The ExA is content that this approach demonstrates how starting with the Order limits in the application, the Proposed Development would be designed and constructed in a way which provides the Applicant with the flexibility it needs with regard to addressing uncertainties and unforeseen issues inherent with this stage of the Proposed Development, while resulting in permanent CA powers only being exercised over the minimum land required using the Articles in the draft DCO at the end.
- 6.5.37. The ExA is therefore satisfied that in accordance with s122(2) of PA2008 and the CA Guidance, the land subject to CA is required for the development to which the development consent relates or is required to facilitate or be incidental to the development and that the land and rights to be taken are no more than is reasonably required for the purposes of the Proposed Development, is no more than is reasonably necessary and is proportionate.

The Acquisition of Land Interests by Agreement

- 6.5.38. S122(3) of the PA2008 requires there to be a compelling case in the public interest for the CA of land.
- 6.5.39. Paragraph 25 of the CA Guidance states:

“Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail. Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case, it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset.”

- 6.5.40. Paragraph 45 of the CA Guidance makes it clear that further guidance is to be found in the Crichel Down Rules (now contained in Guidance on Compulsory Purchase Process and The Crichel Down Rules, DLUHC, July 2019). This states in Part 2 that:

“The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to / arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.

Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:

- *plan a compulsory purchase timetable as a contingency measure; and*
- *initiate formal procedures”.*

- 6.5.41. At the start of the Examination the ExA noted the large number of RRs highlighting what APs considered to be a lack of effort on the part of the Applicant in engaging with them to secure the necessary land rights for the Proposed Development by negotiation in accordance with the CA Guidance and the Crichel Down Rules (DLUHC, July 2019).

- 6.5.42. Where there had been discussions with the Applicant, APs raised issues such as: lack of response to queries and / or lack of specific details in responses; the general nature of the draft HoTs issued; unwillingness to consider alternative routes for the OCC through their land; unreasonable covenants and reluctance to reimburse professional fees at all or at a reasonable level.

- 6.5.43. APs raising these issues included:

- Gateley Hamer Limited o.b.o Stonegate Group / Unique Pub Properties Ltd [RR-368].
- Henry Adams o.b.o Alan David Lewhellin Griffiths and Janice Elizabeth Griffiths [RR-003].
- Angela Lightburn [RR-020].
- Paul Lightburn [RR-293].
- Henry Adams o.b.o Susie Clare Fischel [RR-378],
- James Scott [RR-157].
- Knight Frank LLP o.b.o Oakendene Estate – Langlands Pearse and Others [RR-278].

- Savills UK Ltd o.b.o Angmering Park Farms LLP, The Angmering Park Estate Trust [RR-022].
- Henry Adams LLP o.b.o Claudia Langmead Farming Ltd [RR-073].
- Lester Aldridge LLP o.b.o Green Properties [RR-138].
- Joanne Higgins [RR-170].
- Henry Adams LLP o.b.o Mr and Mrs G Woolgar [RR-254].
- Henry Adams LLP o.b.o Mssrs Hutchings [RR-259].
- Knight Frank o.b.o R J Goring, R H Goring, P Goring, Wiston Estate Partnership [RR-307].
- Ruth Taylor [RR-335].
- The Baird Farming Partnership [RR-387].
- Savills UK Ltd o.b.o The Personal Executors of Lady Sarah Margaret Clutton [RR-391].
- Lester Aldridge LLP o.b.o Thomas Ralph Dickson [RR-396].
- Henry Adams LLP o.b.o Timothy Longhurst [RR-400].
- Charles Robert Denys Arbuthnot [RR-058].

6.5.44. In addition, the ExA was concerned that the LRT submitted at the Pre-Examination Procedural Deadline [PEPD-016] indicated that negotiations with APs in most cases had not progressed to the signing or at least agreement of HoTs over a period of approximately 2 years. The agreement or signing of HoTs, though not totally in the Applicant's control when considered in the overall context of the Applicant's level of engagement with land interests was considered by the ExA at least indicative of whether reasonable steps were being taken to obtain the necessary land rights for the Proposed Development. As a result, at the PM the ExA informed the Applicant that it was expecting substantial progress to be made on negotiations by the next Examination deadline and between subsequent deadlines.

6.5.45. Following up on this issue, the ExA asked the Applicant to provide an update on progress with land rights negotiations in its WQs [PD-009, LR1.21].

6.5.46. The Applicant's response [REP3-051] submitted at Deadline 3 on 25 April 2024, over two months into the Examination indicated to the ExA that in terms of the signing or agreement of HoTs, the Applicant had made little progress:

▪ Total number of signed agreements required	- 106
▪ Number of Key Terms issued	- 101
▪ Number of Key Terms signed	- 6
▪ Number of agreements completed	- 2

6.5.47. At CAH1 [REP4-073] held on 17 and 21 May 2024, around a month later, most of the APs or their representatives, making oral representations, raised concerns about aspects of the Applicant's approach and progress with negotiations. As a result of this and lack of evidence of progress with negotiations from the LRT the ExA expressed in clear terms to the Applicant at the end of the Hearing that in its view the Applicant continued to make slow and little progress or effort in obtaining the land voluntarily and that it could not rely on the PA2008 to do the job for them.

6.5.48. The ExA stated [REP4-073] that the provisions for CA powers under PA2008 is a last resort power, and the ExA expressed further that in its view, the Secretary of State may not on the current evidence, be able to make the case for CA without significant progress being made in negotiations and that the Applicant had little time left to do so. Only where the Applicant had demonstrated whether successfully or unsuccessfully, that it had undertaken reasonable steps to acquire the land

voluntarily would the Secretary of State entertain the grant of CA powers, and the ExA considered the Applicant was some distance from that point.

6.5.49. Following up on this issue, the ExA asked the Applicant to provide a further update on progress with land rights negotiations in its FWQs [PD-0012, LR2.2].

6.5.50. The Applicant's response [REP5-119] submitted at Deadline 5, approximately five months into the Examination indicated that in terms of the signing or agreement of HoTs at least, the Applicant had still made little progress:

- Total number of signed agreements required - 109 (3 additional identified since last progress report [REP3-051])
- Number of Key Terms have/ are to be issued - 106
- Number of Key Terms signed/ agreed - 17
- Number of agreements completed - 2

6.5.51. As well as submitting an updated LRT [REP5-010], the Applicant also submitted LERs for certain APs at Deadline 5 providing more detailed information on engagement and the progress with negotiations [REP5-013 to REP5-022]. A final LRT [REP6-018] and further LERs [REP6-021 to REP6-108] were submitted at the close of the Examination Deadline 6.

6.5.52. Taken overall, the LRT and LERs indicate following CAH1 [REP4-073], there was a significant increase in engagement between the Applicant and landowners.

Consideration of Individual Objections and Issues

6.5.53. Many of the APs raised similar issues. The perceived excessive width of the proposed Order limits and the lack of effort on the part of the Applicant to obtain the land rights necessary for the Proposed Development by negotiation, both discussed above, were reoccurring themes in written and oral submissions. In addition, the following concerns were frequently raised:

- The lack of consultation on the route of the OCC in the Application;
- The reluctance on the part of the Applicant to consider alternative routes proposed by land interests or provide feedback when considered;
- The generic nature of the HoTs proposed;
- The restrictive nature of covenants sought that could consequently have a detrimental effect on the future operation, maintenance and enhancement of the land; and
- The lack of clarity on how and when professional fees incurred by land interests in relation to the Proposed Development would be reimbursed

6.5.54. Part C to this Recommendation sets out the ExA's consideration of objections and issues raised by APs in respect of CA and / or TP and the Applicant's responses to those. It should be read in conjunction with the Applicant's final version of the LRT submitted into the Examination at Deadline 6 [REP6-018], which under each unique reference number (URN) lists: the status of the objection; the plots for each land interest; identifies those subject to CA of land, CA of rights and TP or TP of land only (as shown on the Land Plans Onshore [AS-025] in pink, blue and green respectively); the proposed works on those plots and the status of negotiations at the end of the Examination.

- 6.5.55. The ExA has considered all the objections received and many of the issues raised by IPs have also been considered in earlier parts of this Recommendation when considering the planning issues arising in relation to the Proposed Development. The objections are summarised in Part C in the context of the application for the grant of CA and TP powers. Other objections have also been received from APs listed in the BoR. However, these other objections refer to concerns not directly related to CA or TP and are not reported below.
- 6.5.56. The ExA examined CA objections against the tests set out in s122 and s123 of the PA2008, having regard to the CA Guidance. The ExA also considered objections to the application for powers of TP under Articles 29 and 30 of the draft DCO and by those who may be able to make a claim under s10 of the Compulsory Purchase Act 1965 or Part I of the Land Compensation Act 1973. Similarly, the ExA had regard to the Human Rights Act 1998 and the EA2010 in considering the application for the grant of CA and TP powers.

6.6. STATUTORY UNDERTAKERS LAND, RIGHTS AND APPARATUS

- 6.6.1. S127 of PA2008 applies to land acquired by SUs for the purposes of their undertaking, and places restrictions on the CA, or CA of a new right, of such land where a representation is made in relation to a DCO application and is not withdrawn by the close of the Examination of that application. The Recommended DCO (Article 36) [REP6-012] includes provision to authorise the CA of land and rights held by SUs for the purposes of their undertaking.
- 6.6.2. If s127 applies, the CA and CA of rights of SU's land can only be authorised if the Secretary of State is satisfied:
- The land can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.
 - The right over land can be purchased without serious detriment to the carrying on of the undertaking, or any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.
- 6.6.3. S138 of PA2008 applies where an Order authorises the acquisition of land (compulsorily or by agreement) and there subsists over the land a relevant right or there is on, under or over the land relevant apparatus.
- 6.6.4. S138(4) provides that an Order may include provision for the extinguishment of the relevant right or the removal of relevant apparatus only if the Secretary of State is satisfied that the extinguishment, or removal, is necessary for the purpose of carrying out the development to which the Order relates. The Recommended DCO (Requirement 36) [REP6-012] includes such a provision.
- 6.6.5. At the close of the Examination the Applicant's position in relation to these matters is contained in the LRT [REP6-018] and LERs [REP6-029, REP6-030, REP6-053, REP6-043, REP6-067].

- 6.6.6. This section sets out the ExA consideration of objections and issues raised by SUs in respect of CA and / or TP and the Applicant's responses to those. It should be read in conjunction with Section 7 of the Recommendation (DCO) and the Applicant's final version of the LRT submitted into the Examination at Deadline 6 [REP6-018].

Southern Gas Networks Plc (SGN) (LRT URN: 011)

- 6.6.7. SGN is the licensed gas transporter for the area of the Proposed Development. SGN's main concerns related to the adequate protection of its assets and the suitable wording of PPs in this regard [RR-359 and REP1-154].
- 6.6.8. Negotiations continued throughout the Examination between SGN and the Applicant. The LRT [REP6-018] sets out that PPs have now been agreed and confirms that the final draft DCO [REP6-012] reflects the agreed position.
- 6.6.9. The ExA is satisfied that s127 of PA2008 was never engaged for SGN as it is not identified as a landowner. The ExA is also 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 SGN's undertaking.

Southern Water Services Ltd (SWS) (LRT URN: 015)

- 6.6.10. SWS is the appointed water and sewerage undertaker under the Water Industry Act 1991 for the area of the Proposed Development. SWS's main concerns related to the adequate protection of its assets, works proposed in the close proximity of ground water capture extraction zones and the suitable wording of PPs [RR-360, REP4-126 and REP5-174].
- 6.6.11. Negotiations continued throughout the Examination between SWS and the Applicant. The LRT [REP6-018] sets out that agreement had not been reached on PPs by the close of the Examination. SWS confirmed in its written submission at Deadline 6 [REP6-310] that it continues to negotiate with the Applicant on PPs in respect of the interface between its apparatus Proposed Development; that discussions with the Applicant are progressing positively and are advanced, but the parties are not yet agreed. SWS further states it is confident that an agreement can be reached by the end of the Recommendation period.
- 6.6.12. The ExA is satisfied that s127 of PA2008 was never engaged for SWS because it is not identified as a landowner. The ExA is also 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 undertaking.
- 6.6.13. The ExA's conclusions with regard to PPs and its Recommended DCO are set out in Section 7 of this Recommendation.

Network Rail Infrastructure Ltd (NRIL) (LRT URN: 034)

- 6.6.14. NRIL is a SU responsible for maintaining and operating the country's railway infrastructure and associated estate. NRIL's submissions [RR-226, REP1-060, REP3-122 and REP3-123] during the Examination raised concerns around the use of the Applicant's proposed CA powers, the adequacy of proposed PPs and the need for an asset protection agreement.

- 6.6.15. Negotiations continued throughout the Examination between NRIL and the Applicant. The LRT [REP6-018] and LER [REP6-029] indicated that the parties are currently negotiating protective provisions and a framework agreement with good progress being made.
- 6.6.16. However, NRIL in its closing statement [REP6-316] maintained its objection subject to the agreement of PPs, highlighting two key issues (among others) remaining to be resolved: NRIL's requirement to include provisions that would restrict the Applicant's exercise of CA powers in relation to railway property without NRIL's consent and the Applicant's proposals to insert a cap on the indemnity of £25M per event.
- 6.6.17. Considering the outstanding objections from NRIL and the fact that 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 NRIL's undertaking.
- 6.6.18. The ExA's conclusions with regard to PPs and its Recommended DCO are set out in Section 7 of this Recommendation.

Tc Rampion OFTO Ltd (TcR) (LRT URN: 035)

- 6.6.19. TcR owns and operates the offshore transmission system associated with the Rampion OWF. This includes the offshore substation, onshore and offshore cables, the Twineham substation, and connecting infrastructure to NGET's Bolney Substation.
- 6.6.20. TcR's main concerns related to adequate protection of its assets, the agreement of PPs and the lack of meaningful discussions with the Applicant [RR-384].
- 6.6.21. The LRT [REP6-018] and LER [REP6-030] indicated that negotiations are ongoing with agreement yet to be reached on the length of the cable easement term, financial offer and ability for the Landowner to grant third parties rights.
- 6.6.22. However, TcR's closing statement [REP6-311] maintained its objection, highlighted a lack of engagement with the Applicant following the submission of its RR and raised the following issues:
- An inaccuracy in the BoR [AS-040] which does not include TcR's Category 2 interest in plot 34/25.
 - A lack of rationale or justification for the Applicant including such a large portion of TcR's land within the proposed Order limits.
 - The unwillingness of the Applicant, (contrary to the spirit of the principles of co-ordination of the transmission network as set out in National Policy Statement for Electricity Networks Infrastructure (EN-5)), to enter into collaborative discussions with TcR and an adjacent developer, who plans to also utilise TcR's land within plot 34/24 for a utility scale energy project.
 - The provision of a valuation to TcR.
 - Comparables provided by TcR from other similar negotiations, as well as details of the land which transacted in 2015 for significantly more than currently offered by the Applicant.

- Whether the Applicant has met the test of entering into meaningful negotiations, given that voluntary offers are significantly below market evidence, does not result in equivalence to the TcR and are not in line with the compensation code.
- That the £14.8m, set out in the CA FS, is not sufficient to cover the potential claims arising from the exercise of CA powers.

- 6.6.23. As the SU and an owner/IP in plots required for the Proposed Development, it is TcR's position that if land it has an interest in is purchased compulsorily, there would be serious detriment to TcR's undertaking because, without appropriate voluntary land and crossing agreements, there is insufficient protection in place for the OFTO's assets which are in situ in this location. Further, TcR considers that this detriment cannot be made good by the use of other land.
- 6.6.24. TcR, does however remain willing to engage to seek voluntary agreements with the Applicant or to agree a set of PPs which could be inserted into the draft DCO and reduced CA powers to address its concerns.
- 6.6.25. The ExA accepted an additional submission from the Applicant [AS-047] in response to TcR's closing statement [REP6-311].
- 6.6.26. Regarding an inaccuracy in the BoR [AS-040] the Applicant noted that plot 34/24 is owned by NGET. The NGET title does not note a registered easement for the benefit of TcR over this land parcel therefore it was not recorded as a Category 2 interest in the BoR [AS-047]. In addition, the Applicant had no record of a TcR interest in Plot 34/23 which was also referred to in the closing statement [REP6-111]. The Applicant confirmed that it would seek to establish the precise location of the buried cables and if required update and maintain a post Examination BoR and change log.
- 6.6.27. Regarding the large portion of TcR's land within the Order limits, the Applicant explains that there needs to be flexibility within the Order limits as to 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. Refinement to the 40m working corridor would be implemented as controlled by the stage specific Construction Method Statement (CMS).
- 6.6.28. Regarding TcR's concerns around the Applicant's engagement with TcR and an adjacent landowner, the Applicant understood this to be One Planet (Ancleggan Ltd) with whom it was already engaging. In the Ancleggan LER [REP6-023], the Applicant confirmed the current position:
- "The cable design work brief has included a requirement to reduce impacts on the One Planet scheme where practicable and subject to the requirements of the Rampion 2 project. Rampion 2 has committed to share the key design work outputs with Ancleggan and hold a detailed interface meeting with engineers and designers within 3 weeks of completion of the work."*
- 6.6.29. Regarding detailed valuation discussions relating to the quantum of compensation the Applicant pointed out that these are not matters for the Examination and the ExA agrees.
- 6.6.30. In response to the point regarding lack of engagement, the Applicant pointed to the record of engagement set out in the LER for TcR [REP6-030]. Detailed negotiations have been ongoing since October 2023 with adjustments made to the key terms

reflecting the less typical requirements of the Landowner due to it being also an asset owner. The submission of method statements, risk assessments and notice periods required for their production and approval have been agreed. The Applicant hoped to secure the required land rights by way of voluntary agreement; however, a number of key commercial points remain to be agreed as noted above, and in the Applicant's view, TcR's land valuation was a significant barrier to moving forwards.

- 6.6.31. Finally, the Applicant remains confident that the estimated compensation liability provided in the FS, which includes contingency, remains valid and up to date. It is based on expert valuation advice from Carter Jonas LLP, and it assesses the compensation that would be payable under the compensation code.
- 6.6.32. The ExA notes that the Applicant would seek to confirm the precise location of TcR's assets and if required update and maintain a post Examination BoR and change log.
- 6.6.33. As discussed above in the ExA general considerations of the CA / TP case the ExA 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. This means that at this stage draft 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.
- 6.6.34. The ExA notes the ongoing engagement between the Applicant and One Planet (Ancleggan) and is content that the Applicant is acting in the spirit of the principles of co-ordination of the transmission network as set out in National Policy Statement for Electricity Networks Infrastructure NPS-EN-5 2011 and 2024.
- 6.6.35. The ExA agrees with the Applicant that detailed valuation discussions relating to the quantum of compensation are not matters for the Examination and is content that the Applicant's FS [REP4-009] demonstrates (as detailed further below) that there would be sufficient funds available to cover potential claims arising from the exercise of CA powers.
- 6.6.36. Considering the outstanding objections from TcR, and the fact that 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 TcR's undertaking.
- 6.6.37. The ExA's conclusions with regard to PPs and its Recommended DCO are set out in Section 7 of this Recommendation.

National Highways (LRT URN:038)

- 6.6.38. NH operates, maintains and improves the SRN under licence from the Secretary of State for Transport in the area of the Proposed Development.
- 6.6.39. NH's main concerns relate to: agreeing appropriate PPs; the need to safeguard NH's interest with regards to CA proposals or proposals concerning the acquisition of other rights; the Applicant's proposals to carry out trenchless drilling at A27 Hammerpot; the impact of drainage on the SRN where the route passes under the A27 at Hammerpot; the construction, operation or maintenance of a site compound

associated with the Proposed Development in close proximity to the SRN and the implications for the SRN; insufficient detail in the OCoCP; insufficient detail in the OCWTP; the need to safeguard NH's interest as the Strategic Highway Authority via the draft DCO, PPs or other appropriate or relevant legal agreements; insufficient detail in traffic modelling to demonstrate that the proposals would not unacceptably impact on the safety, reliability and/or operation of the SRN as required by national planning and transport policy; Traffic attracted to, generated by or rerouted as a result of the proposals and the potential implications for the SRN; and compliance with DfT C1/22 SRN and the delivery of sustainable development which was published in December 2022.

6.6.40. The SoCG submitted into the Examination at Deadline 6 [REP6-098] confirmed that all these issues had been resolved apart from:

- The agreement of PPs.
- The need to safeguard NH's interests with regards to CA proposals or proposals concerning the acquisition of other rights.
- The construction, operation or maintenance of a site compound associated with the Proposed Development in close proximity to the SRN and the implications for the SRN.
- The need to safeguard NH interests as the Strategic Highway Authority via the draft DCO, PPs or other appropriate or relevant legal agreements.
- Traffic attracted to, generated by or rerouted as a result of the proposals and the potential implications for the SRN.

6.6.41. The LRT [REP6-018] and LER [REP6-053] indicate that negotiations are ongoing between the Applicant and NH.

6.6.42. 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.

6.6.43. The ExA's conclusions with regard to PPs and its Recommended DCO are set out in Section 7 of this Recommendation.

National Grid Electricity Transmission Plc (NGET) (LRT URN: 055)

6.6.44. NGET is a SU with assets within and within proximity to the Order land that form part of the national electricity transmission network. NGET's main concerns relate to the protection of these assets and also to the safeguarding of parts of the Order land for the potential future operation and extension of its Bolney substation [RR-032, REP1-157, REP4-089, REP6-244, REP6-283].

6.6.45. The Applicant and NGET were involved in negotiations throughout the Examination. The SoCG [REP6-244] between the Applicant and NGET sets out the main issues and the position at the end of the Examination:

- NGET's rights of access to inspect, maintain, renew and repair apparatus.
- Instances where the Applicant intends to acquire land or rights or interfere with any of NGET's interests in land.
- Environmental mitigation within NGET owned land.
- Transfer of the benefit of the order / ability to carry out substation works under TCPA1990.

- 6.6.46. With regard to rights of access, NGET's position is that it requires its standard PPs to be included in the Recommended DCO. At the end of the Examination, these had not been agreed by the Applicant with the main points under discussion set out in the final version of the EM [REP6-010]. The ExA's consideration of the issues raised, and conclusion is set out in Section 7 of this Recommendation.
- 6.6.47. With regard to the Applicant's intention to CA NGET's land or rights, NGET's position is that as well as requiring its standard PPs in the Recommended DCO, the Applicant's proposal to compulsorily acquire rights and impose restrictions over plots 34/25, 34/26 and 34/27 would make it more difficult to site other customers' cables in this area and may have the effect of sterilising the land entirely for that purpose. The plots are larger than the Applicant requires for its purposes and should be reduced. Additionally, the Applicant's ability to use powers of CA should be restricted so that they can only be exercised with NGET's consent. Powers of CA over plot 34/28 should be removed entirely from the BoR.
- 6.6.48. Further throughout the Examination, NGET has maintained that powers of CA are not necessary because NGET has undertaken to build the substation via a Transmission Owner Construction Offer (TOCO) to the National Energy System Operator (NESO). Once accepted by the NESO, the TOCO is legally binding on NGET. NGET is obliged to conclude an Interface Agreement (IA) directly with the Applicant to support the TOCO and to grant each party the right to install, use, retain, repair, inspect, test, remove and modify its own assets on the other party's land, subject to certain conditions and limitations. The IA would also grant each party a right of access to the other party's land for the purpose of exercising such rights or performing such obligations, subject to certain arrangements and provisions. The IA would further provide for the sharing or provision of certain common assets and services between the parties, such as security, electricity supply, telecommunications, and metering.
- 6.6.49. This customer connections process is already established and would provide the Applicant with a connection to the National Electricity Transmission System (NETS) and all that it needs to install, retain and access its equipment. There is, therefore, no justification, in NGET's opinion, for the CA of Plot 34/28.
- 6.6.50. In response the Applicant, to address NGET's concerns over restrictions of its land, submitted and had accepted by the ExA a change request which:
- Reduced the scope of works to land west of the Bolney Substation, changing from Work 19 Cable Installation to Work 13 Construction Access, and a change in land rights for Plot 34/31 and part of Plot 34/25 from permanent to temporary rights.
 - Reduced the scope of works to land east of Bolney Substation, changing from Work 17 Environmental Mitigation to Work 13 Construction Access, and a change in land rights for the majority of Plot 34/27 from permanent rights to temporary rights, (the southern part of Plot 34/27, the Applicant contends, is still required for environmental mitigation in the form of boundary planting).
 - In the area of the proposed substation extension, changed proposed land rights for Plot 34/28 from permanent acquisition to permanent rights and restrictive covenants.
- 6.6.51. This addressed NGET's concerns with respect to extent of planting mitigation within its freehold ownership but not the unrestricted CA of rights over its land.

- 6.6.52. However, with regard to the TOCO, the Applicant still considered this to be an internal agreement between NGET and the Electricity Systems Operator which it was not party to and did not provide sufficient rights to construct the Proposed Development.
- 6.6.53. NGET submitted a position statement at Deadline 6 [REP6-283] in which it maintained its objection to unrestricted CA of rights over of its land, proposing an Article in the Applicant's draft DCO [REP6-007] that would prevent exercising such powers without NGET's agreement, while still arguing that such powers are not in any case needed by the Applicant due to the TOCO being in place. The statement also set out the indemnity and insurance provisions it required.
- 6.6.54. Considering the outstanding objections from NGET and the fact that 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 NGET's undertaking.
- 6.6.55. The ExA's conclusions with regard to PPs and its Recommended DCO are set out in Section 7 of this Recommendation.

Other Statutory Undertakers

- 6.6.56. The LRT [REP6-018] includes a number of other SUs with interests in the Order land, including: the EA; UK Power Networks (Operations) Ltd (UKPN); Scottish and Southern Power Distribution Ltd (SSPD); South-East Power Networks Plc (SEPN); Neos Networks Ltd; Portsmouth Water Ltd; OGU Group Ltd; City Fibre Ltd; Virgin Media Ltd; Openreach Ltd and Vodafone. None of the interests are identified as landowner interests and none of these SUs made any representations or raised any concerns or objections during the Examination. As such, s127 of PA2008 is not engaged in respect of these SUs.
- 6.6.57. Part 1 of Schedule 10 of the final draft DCO [REP6-007] includes protective provisions for electricity, gas, water and sewerage undertakers in general. Part 2 of Schedule 10 of the final draft DCO includes PPs for operators of electronic communications code networks. The LRT [REP6-018] sets out that the Applicant received no comments on the Applicant's proposed PPs from Neos Networks Ltd; Portsmouth Water Ltd; OGU Group Ltd; City Fibre Ltd; Virgin Media Ltd; Openreach Ltd and Vodafone.
- 6.6.58. With regard to UKPN, the LRT [REP6-018] sets out that the parties are currently negotiating PPs in the form of a SA which is now largely agreed, subject to a final point on UKPN's standard form property rights being agreed.
- 6.6.59. With regard to SSPD, the LRT [REP6-018] sets out that the parties are currently negotiating PPs and a SA with few points now outstanding. The protective provisions are agreed, and only the indemnity wording in the SA remains.
- 6.6.60. With regard to SEPN, the LRT [REP6-018] sets out that the parties are currently negotiating PPs in the form of a SA which is now largely agreed, subject to a final point on SEPN's standard form property rights being agreed.
- 6.6.61. In respect of the plots in which the above mentioned other SUs hold interests, the ExA is satisfied that the powers sought by the Applicant are necessary for the

Proposed Development and consistent with s138 of PA2008 and that there would be no serious detriments to any of the SU's undertakings.

Special Category Land

- 6.6.62. Special Category Land is defined in Regulation 2 of the Infrastructure Planning (applications: Prescribed Forms and Procedure) Regulations 2009 as land identified as forming part of a common, open space, NT land or fuel or field garden allotment.
- 6.6.63. Part 5 of the BoR identifies plots of land which constitute "special category land" for the purposes of sections 130 and 132 of PA2008 that will be affected by the Proposed Development and the rights contained in the Order. In this case land held inalienably by the NT, Common Land, Open Space and Allotments which are identified as such on the Special Category Land Plans [AS-027].
- 6.6.64. This section sets out the ExA's consideration of objections and issues raised in respect to the CA and / or TP of Special Category Land and the Applicant's responses to those. It should be read in conjunction with the Applicant's final version of the LRT submitted into the Examination at Deadline 6 [REP6-018].

National Trust (NT) (LRT URN: 046)

- 6.6.65. NT has two land interests affected by the Proposed Development, one being freehold land at Washington, the other a covenant over land at Climping. The Applicant has been in negotiation with NT throughout the examination and the position with respect to both interests at the close of the Examination set out in the LER [REP6-101] is summarised below.
- 6.6.66. With respect to the freehold land at Washington, the majority that is impacted by the scheme is subject to a 99-year Farm Business Tenancy to the Lorica Trust. The NT has retained rights to grant the Applicant a cable easement, however a separate lease is required for the required rights to construct a construction access. The Lorica Trust has agreed key commercial terms in its capacity as the Landowner's long-term tenant of the land proposed to be used for a construction access. HoTs were agreed with NT for the land rights required for the cable installation at Washington in May 2024. Full draft documents for the Washington land have been issued to NT's solicitors and these are still under discussion.
- 6.6.67. With respect to the covenant over land at Climping, full documents have been negotiated and agreed in principle for a "Covenant Deed of Release".
- 6.6.68. In this case, the ExA has not seen evidence that NT's objection to the CA of land rights for the Proposed Development at Washington has been withdrawn. As such, the ExA finds that the CA of rights over NT land at Washington would be subject to SPPs. However, given that the LER [REP6-101] suggests that agreement has been reached in principle on both the freehold land at Washington and covenant land at Climping, the ExA recommends that if the Secretary of State is minded to grant consent, the Secretary of State may wish to seek an update from the Applicant and the NT, confirming whether or not the objection from the NT has been withdrawn. If parties confirm that the NT's objection has been withdrawn, then the Secretary of State may conclude that the case for the CA of rights over NT's land is made.

Common Land

- 6.6.69. The Applicant is seeking the CA of rights over land identified as common land. This engages s132 of PA2008. No common land would be subject to CA of land and as such, s131 of PA2008 is not relevant.
- 6.6.70. S132(2) of PA2008 states that an order granting development consent which authorises the CA of a right over common land will be subject to SPP unless: a) the Secretary of State is satisfied that one of subsections (3) to (5) applies; and b) that fact, and the subsection concerned, are recorded in the Order or otherwise in the instrument or other document containing the Order. Subsection (3) applies if the order land, when burdened with the order right, will be no less advantageous than it was before to: (a) the persons in whom it is vested; (b) other persons, if any, entitled to rights of common or other rights; and (c) the public.
- 6.6.71. The affected plots and rights sought are set out in Part 5 of the BoR [REP6-016] and are shown on the Special Category Land Plan [AS-027]. Appendix 7 of the SoR [REP6-015] also provides an overview of Special Category Land.
- 6.6.72. The Applicant is seeking CA powers over the following common land: plots 27/10, 27/24, 27/25 and 27/26.
- 6.6.73. The title to Order Plots 27/10, 27/25 and 27/26 is unregistered with the land presumed to be owned by Lavinia Norfolk's Family Charitable Trust. The land is comprised of track, public footpath (AST/2519/2) and grassed verge area.
- 6.6.74. Plot 27/24 is privately owned by Alan David Llewellyn Griffiths and Janice Elizabeth Griffiths and is comprised of land being track and verge adjacent to the adopted highway (Horsham Road, B2135).
- 6.6.75. The acquisition of rights is required over these parcels for a construction and operational access, comprising Works No. 14, and the Applicant is seeking to acquire a package of Construction and Operational Access Rights for that purpose.
- 6.6.76. The land is already principally comprised of private and adopted tracks, over which the rights of common may be exercised to the extent that is feasible given the potential for conflict with vehicles along the existing highway. The rights sought by the Applicant are consistent with the current use of the land by the commoners and the public. During construction of the Proposed Development, there may be limited traffic management measures put in place which temporarily restrict access to the land for safety reasons such as the temporary closure of the public footpath (AST/2519/2) as indicated on the Access, Rights of Way and Streets Plan [AS-028].
- 6.6.77. Following construction, once the Proposed Development is operational, the existing use of the land, including the PRoW over the highway and public footpath; the public right to access the land as Open Access Land; and the commoners rights over the land would be unaffected. No permanent closure or termination of the public rights or commons rights over these plots is sought by the Order.
- 6.6.78. All rights of common, save for a potential temporary interruption to access during construction, would remain exercisable and would be unaffected by the proposed CA of rights sought by the Applicant.

- 6.6.79. The ExA considers that Plots 27/10, 27/24, 27/25 and 27/26 of the Order land, when burdened with the proposed Construction and Operational Access Rights, would be no less advantageous than it was before to the persons in whom it is vested, persons entitled to rights of common, and the public. The ExA therefore concludes that the test set out in section 132(3) is satisfied.
- 6.6.80. The Applicant is seeking TP powers over the following common land: plots 27/6, 27/9, 27/11 and 27/12.
- 6.6.81. Title to these parcels is unregistered but the land is presumed to be owned by Lavinia Norfolk's Family Charitable Trust. The land comprises part of a grassed verge and wooded area together with part of the adopted highway (Horsham Road, B2135), public footpath (AST/2519/2).
- 6.6.82. The Applicant does not seek CA powers over these parcels and there would be no permanent impact upon the existing uses of the land. The Applicant seeks only the power to temporarily use the land during construction pursuant to the powers in Article 33 (Temporary use of land for carrying out the authorised project) and Schedule 9 (Land of which TP may be taken) to the Recommended DCO for the purposes of a temporary use for access from the nearest public highway to the onshore cable corridor, comprising Works No.13.
- 6.6.83. During construction of the Proposed Development, there may be limited traffic management measures put in place which temporarily restrict access to the land for safety reasons such as the temporary closure of the public footpath (AST/2519/2) as indicated on the Access, Rights of way and Streets Plan (Document Reference: 2.5). Otherwise, the use of the land by the public and the persons with commons rights would be unaffected. No permanent closure or termination of the public rights or commons rights over these plots is proposed.
- 6.6.84. Based on the above, the ExA considers that the proposed exercise of TP powers over Order Plots 27/6, 27/9, 27/11, 27/12 does not engage the provisions of section 132 of the PA 2008 so as to potentially require the Order to be subject to SPP, because no powers of CA are sought over the land.
- 6.6.85. Notwithstanding, the ExA also considers that the proposed temporary use of the land by the Applicant meets the criteria in section 132(3) because the use of the Order Land, when the proposed TP powers are exercised, would be no less advantageous than it was before to the persons in whom it is vested, persons entitled to rights of common, and the public.

Open Space

- 6.6.86. The Applicant is seeking the CA of rights over land identified as open space. This engages s132 of PA2008. No open space would be subject to CA of land and as such, s131 of PA2008 is not relevant.
- 6.6.87. S132(2) of PA2008 states that an order granting development consent which authorises the CA of a right over open space will be subject to SPP unless: a) the Secretary of State is satisfied that one of subsections (3) to (5) applies; and b) that fact, and the subsection concerned, are recorded in the Order or otherwise in the instrument or other document containing the Order. Subsection (3) applies if the order land, when burdened with the order right, will be no less advantageous than it

was before to: (a) the persons in whom it is vested; (b) other persons, if any, entitled to rights of common or other rights; and (c) the public.

- 6.6.88. The affected plots and rights sought are set out in Part 5 of the BoR [REP6-016] and are shown on the Special Category Land Plan [AS-027]. Appendix 7 of the SoR [REP6-015] also provides an overview of Special Category Land.
- 6.6.89. Plots 22/8 and 22/9 are registered open space (in the Register of Town and Village Greens (Y.G.4) administered by West Sussex CC and registered on the 11 April 1972), in the ownership of Washington PC and is comprised of part of allotment gardens together with part of a large recreation ground which includes grassed sports pitches.
- 6.6.90. The acquisition of rights is required for cable installation works comprising Works No.9 and the Applicant is seeking to acquire a package of Cable Rights and Cable Restrictive Covenant. The cables would be installed beneath the surface of the allotments and the Recreation Ground by HDD construction techniques therefore there would not be any impact upon the use of the land during the construction of the Proposed Development.
- 6.6.91. Once the cables have been installed, there would be a restrictive covenant which restricts potentially intrusive and damaging activities from being carried out upon the land. The form of restrictive covenant, referred to as the Cable Restrictive Covenant, can be found in Schedule 7 of the Recommended DCO. The covenant would not restrict the existing uses of either the Allotments or the Recreation Ground or impact upon their status as a town and village green. Furthermore, it expressly permits agricultural practices carried out to a depth 0.9m from the surface of the land.
- 6.6.92. The Applicant has taken a precautionary approach in assuming plot 22/7 in the ownership of the NT is open space. The land is known locally as Jockey's Meadow and is comprised of a large hay meadow. The NT permits its use by members of the public for recreational purposes such as dog walking and it is also used by a local school for their forest school. The land is adjacent to the Allotments and Washington Recreation Ground referred to above.
- 6.6.93. The acquisition of rights is required for cable installation works comprising Works No.9 and the Applicant is seeking to acquire a package of Cable Rights and Cable Restrictive Covenant. The cables would be installed beneath the surface of Jockey's Meadow by HDD construction techniques, and there would not be any requirement to fence off the land during construction. There would be any impact upon the use of the land during the construction of the Proposed Development and access would maintained unless there is an unforeseen health and safety requirement.
- 6.6.94. Once the cables have been installed, there would be a restrictive covenant which restricts potentially intrusive and damaging activities from being carried out upon the land. The form of restrictive covenant, referred to as the Cable Restrictive Covenant, can be found in Schedule 7 of the Recommended DCO. The covenant would not restrict the existing uses of Jockey's Meadow, nor would the public's enjoyment of the land for recreational purposes be affected. Furthermore, the proposed restrictive covenant expressly permits agricultural practices carried out at a depth up to 0.9m from the surface of the land and would not impact upon the ability to grow and crop hay.

- 6.6.95. The Applicant has also taken a precautionary approach in assuming plots 1a/1, 1a/2, 1b/1, 1b/2, 1b/3, 1b/4, 1/1, 1/2, 1/3, 1/4 and 1b/6 owned by TCE are open space due to its use by members of the public for the purposes of recreation including dog walking and horse riding and water sports/ coastal activities including windsurfing and kite surfing. The land comprises of a shingle/pebble beach with timber groynes at Climping Beach, (including part of West Beach LNR) near Climping in West Sussex.
- 6.6.96. The acquisition of rights is required for underground landfall connection works in the intertidal area, comprising Work No.6. The Applicant is seeking to acquire a package of Underground Cable Connection Rights and Underground Cable Connection Restrictive Covenants.
- 6.6.97. The installation works underneath Climping Beach are to be implemented using HDD construction techniques and as the cables would be directionally drilled underneath the beach there would be little or no impact on the beach and no direct interruption to the public's access for recreational purposes during the works however there may be some temporary reduced amenity during construction.
- 6.6.98. No above ground works are proposed which would permanently affect the public recreational use of the land or its physical appearance. Once the underground cables have been installed and the Proposed Development is operational, there would be no impact on the public's enjoyment of this land.
- 6.6.99. Plot 1b/5 which is owned privately and is comprised of the seabed and part of the English Channel has in addition been assumed to be open space by the Applicant by virtue of the public use at low tide for recreational activities such as kitesurfing.
- 6.6.100. The acquisition of rights is required for the installation of extension ducts comprising Works No.5, and the Applicant is seeking to acquire a package of Underground Cable Connection Rights and Underground Cable Connection Restrictive Covenants.
- 6.6.101. The installation works underneath Climping Beach are to be implemented using HDD construction techniques and as the cables would be directionally drilled underneath the beach there would be little or no impact on the beach and no direct interruption to the public's access for recreational purposes during the works however there may be some temporary reduced amenity during construction.
- 6.6.102. Finally, the Applicant has assumed, that plots 1/5 and 1/6 comprised of a shingle/pebble beach with timber groynes at Climping Beach and a public footpath (CLI/829/1) in private ownership, is open space, due to the beach being used by the public for recreational purposes.
- 6.6.103. The acquisition of rights is required in order to carry out underground landfall connection works onshore, comprising Works No.7 and the Applicant is seeking to acquire a package of Underground Landfall connection works onshore.
- 6.6.104. The installation works underneath Climping Beach are to be implemented using HDD construction techniques and as the cables would be directionally drilled underneath the beach there would be little or no impact on the beach and no direct interruption to the public's access for recreational purposes during the works however there may be some temporary reduced amenity during construction. Additionally, the public footpath is not proposed to be affected.

- 6.6.105. No above ground works are proposed which would permanently affect the public recreational use of the land or its physical appearance. Once the underground cables have been installed and the Proposed Development is operational, there would be no impact on the public's enjoyment of this land.
- 6.6.106. Based on the above the ExA considers that the plots listed above within the Order limits registered or assumed on a precautionary basis to be open space when burdened with the proposed Onshore Connection Rights and Cable Restrictive Covenants would be no less advantageous than it was before to the persons in whom it is vested, persons entitled to use the land for recreational use, and the public.
- 6.6.107. The ExA therefore concludes that the test set out in section 132(3) of PA2008 is satisfied.

Crown Land

- 6.6.108. This section sets out the ExA's consideration of issues related to Crown land and rights. It should be read in conjunction with the Applicant's final version of the LRT submitted into the Examination at Deadline 6 [REP6-018].
- 6.6.109. The Order limits include Crown Land; the BoR [REP6-016, Part 4], and Onshore Crown Land Plans [REP6-006] identifies plots in which there is a Crown interest that would be affected by the Proposed Development. Article 50 of the final draft DCO [REP6-007] sets out the Crown Rights and that nothing in the draft DCO authorises the undertaker to interfere with any land or rights of TCE, without the consent in writing of the owner of any Crown Interest in the land which is included in the Order limits.
- 6.6.110. The ExA sought updates from the Applicant on progress with securing Crown consent throughout the Examination [PD-009, LR1.21] [EV6-001, agenda item 5] [PD-012, LR2.2]. At close of Examination the position with respect to Crown interests is set out in the LRT [REP6-018] and LER [REP-056].

The Crown Estate

- 6.6.111. With respect to TCE (LRT URN: 086) the status of the Transmission Asset Agreement for Lease (TAFL), is that the Applicant is in discussion with TCE with regard to the agreement of terms for a lease for an area of foreshore within the Land Interest's ownership, which is subject of a regulating lease to Arun DC (LRT URN: 001) and a number of coast protection work consents. TCE has confirmed that the foreshore would be included in the TAFL as it is under TCE ownership and that Arun DC's consent to the TAFL grant would not be required but the Applicant would be required to notify them ahead of starting any works.
- 6.6.112. In addition, the Applicant has been corresponding with TCE as the "appropriate Crown authority" for consent to the making of the DCO in accordance with sections 135 (1) and (2) of the PA2008. TCE confirmed in January 2024 that Town Legal has been instructed in relation to the s135 consents and that they will seek to work collaboratively with the Applicant. Documents have been exchanged with TCE and a legal undertaking provided for this consent, though no formal agreement has been concluded to date.

The Forestry Commission

- 6.6.113. The Order Land also includes land which is not owned by the Crown but in which there is a right benefitting the Crown. The requirement for consent pursuant to section 135(2) of the PA 2008 is also engaged in relation to this land because the draft Order includes provisions applying to land in which there are rights benefitting the Crown.
- 6.6.114. Plots 11/4, 11/5, 11/7, 11/8 and 19/6 are privately owned and comprised of agricultural land, private road (Michelgrove Lane), verge and public bridleways (PAT/2208_1/2, ANG/2175/1 and PAT/2264/5) and public restricted byways (SAS/2092/1 and SAS/2092/13).
- 6.6.115. The land is subject to restrictive covenants pursuant to a Deed of Covenant dated 21 January 1959 between the (1) Forestry Commissioners and (2) the Most Noble Bernard Marmaduke Duke of Norfolk which benefits the Forestry Commission and binds land in title WSX30616. This contains a forestry dedication covenant pursuant to the Forestry Act 1947 which prevents the land from being used otherwise than for the growing of timber in accordance with the rules or practice of good forestry, unless the Forestry Commission consents in writing.
- 6.6.116. West Sussex CC is the local highway authority (LHA) in respect of the public bridleways. The EA and SWS also have interests in the land.
- 6.6.117. In respect of Plots 11/4 and 11/5, the acquisition of Cable Rights and Cable Restrictive Covenants are required to enable cable installation works comprising Works No.9 and the subsequent operation, maintenance and protection of the cable. However as per the Crossing Schedule [APP-122] accompanied by the OCoCP [REP6-224], provides a commitment to install by trenchless crossings (section 4.2 of the OCoCP). The ExA is recommending that this is secured by a new Requirement for trenchless crossings Requirement 46. As this crossing is identified on the Crossing Schedule at Sheet 9, there is a commitment to install by trenchless technique. As such, it is anticipated that the works would have no impact upon the permanent use of the land and the forestry covenant over the land would be unaffected by the Proposed Development or the proposed CA of rights over the land.
- 6.6.118. In respect of Plots 11/7 and 11/8, the acquisition of rights is required to enable construction and operational access comprising Works No.14. The Applicant is seeking to acquire a package of Construction and Operational Access Rights over existing access tracks which are subject to PRow. The rights sought over these Plots are consistent with the existing use of the land.
- 6.6.119. In respect of Plot 19/6, operational access is required under Works No.15 and the Applicant is seeking to acquire a package of Operational Access Rights over existing access tracks which are subject to PRow. The rights sought over these Plots are consistent with the existing use of the land.
- 6.6.120. The Applicant has been engaging with the Forestry Commission with a view to obtaining its consent pursuant to section 135(2) to the inclusion of provisions in the draft Order in respect of land in which there are rights benefitting the Crown.
- 6.6.121. Plots 21/32, 21/33, 21/36 and 21/37 are owned by the NT. The land comprises scrubland lying north of Home Farm, and it is subject to a restrictive covenant

benefiting the Forestry Commission which is registered against the NT's freehold title number WSX30616.

- 6.6.122. Plots 21/32, 21/33 and 21/37 are let to the Lorica Trust Limited. West Sussex CC also has the benefit of rights to enter on to the land. A number of utilities also affect Plot 21/37, in which Openreach Limited has underground telecommunication lines and UKPN has underground and overhead electricity lines. SWS also has rights and apparatus in the land.
- 6.6.123. The Applicant seeks only the power to temporarily use the land during construction pursuant to the powers in Article 33 (Temporary use of land for carrying out the authorised project) and Schedule 9 (Land of which is TP may be taken) to the draft Order for the purposes of a temporary use for access under Works No.13. The forestry covenant over the land will be only temporarily affected by the Proposed Development or the CA of the rights sought in the Recommended DCO.
- 6.6.124. The Applicant has been engaging with the Forestry Commission in order to obtain its consent pursuant to section 135(2) to the inclusion of provisions in the draft Order in respect of land in which there are rights benefitting the Crown.
- 6.6.125. Plot 22/7 is owned by NT. The land comprises agricultural land, known locally as Jockey's Meadow, and public footpath (WAS/2698/1). It is assumed to be open space as it is used by the public for recreational purposes.
- 6.6.126. The land is subject to the same restrictive covenant benefiting the Forestry Commission as plots 21/32, 21/33, 21/36 and 21/37 above which is registered against the NT's freehold title number WSX327958.
- 6.6.127. The land is let to the Lorica Trust Limited and West Sussex CC also has the benefit of rights to enter on to the land. Openreach Limited has underground telecommunication lines and UKPN has underground and overhead electricity lines. SWS also has rights and apparatus in the land.
- 6.6.128. The acquisition of rights is required to enable cable installation works comprising Works No.9. The Applicant is seeking to acquire a package of Cable Rights and Cable Restrictive Covenants. As the works would be carried out using HDD construction techniques it is anticipated that the works would have no impact during construction or upon the permanent use of the land. The forestry covenant over the land would be unaffected by the Proposed Development or the proposed CA of rights over the land.
- 6.6.129. The Applicant has been engaging with the Forestry Commission in order to obtain its consent pursuant to section 135(2) to the inclusion of provisions in the draft Order in respect of land in which there are rights benefitting the Crown.

The Secretary of State for Transport

- 6.6.130. Plot 33/18 is owned by West Sussex CC. The land comprises the adopted highway and verge (Bolney Road, A272) and we understand that the DfT has the benefit of a restriction registered against the title which specifies that no disposition is to be registered unless made in accordance with the Development and Road Improvement Fund Acts 1909 and 1910.

- 6.6.131. The acquisition of rights is required to enable construction and operational access comprising Works No.14. The Applicant is seeking to acquire a package of Construction and Operational Access Rights. The acquisition of the rights sought are consistent with the current use of the land as a highway and therefore it is anticipated that the works will have a negligible impact during construction and no impact upon the permanent use of the land.
- 6.6.132. The Applicant has been engaging with DfT in order to obtain its consent pursuant to section 135(2) to the inclusion of provisions in the draft Order in respect of land in which there are rights benefitting the Crown. The Applicant is awaiting confirmation that the Secretary of State for Transport does have the benefit of this interest, and if so that they consent under section 135(2).

Conclusion on Crown Rights

- 6.6.133. At the close of the Examination, Crown consent had not been received from any of the relevant Crown authorities. In the absence of consents from the relevant Crown authorities, the ExA concludes that the Order cannot authorise the CA or TP of those plots of land and/ or interests which are Crown land because the requirement in s135(1) and s135(2) of PA2008 have not been met. However, the ExA is not aware of any impediments to the granting of Crown consent by the relevant Crown authorities. The Secretary of State would therefore need to ensure that Crown consents are forthcoming from the relevant Crown authorities prior to the grant of development consent.

Other Land Interests

- 6.6.134. The ExA is satisfied that, with respect to all other land interests, the rights sought for the CA of land, CA of rights and TP of land are for a legitimate purpose, that they are necessary and proportionate and that there is a compelling case in the public interest for the powers to be granted, which would outweigh private loss.

Temporary Possession

- 6.6.135. TP powers are sought to facilitate some construction and maintenance activities and, in some instances, as an alternative to reduce the extent of CA. The ExA considers that the TP powers sought would be appropriate to support the delivery of the Proposed Development in respect of all plots identified for TP in the Land Plans Onshore [AS-025] and BoR [REP6-016].
- 6.6.136. These powers are not CA powers, and accordingly the tests under s122 and s123 of the PA2008 are not applicable. However, the request for the TP powers to enable the Proposed Development to be implemented and maintained must be justified. Moreover, their inevitable interference with human rights must be justified, and there must be adequate compensation provisions in place for those whose land is affected.
- 6.6.137. The ExA has considered the objections raised by those persons affected by the application for the permanent acquisition of land and the permanent acquisition of rights in land where they may be preceded by TP. The ExA has also taken all relevant objections into account in reaching conclusions on the application for TP powers on plots where they are sought alone, in the same way as for permanent acquisition.

- 6.6.138. The ExA is satisfied that the TP powers sought would be needed to facilitate implementation of the Proposed Development and that they are justified, including their period of operation. Adequate compensation provisions are in place in the Recommended DCO.

Public Sector Equality Duty (PSED)

- 6.6.139. PSED under the EA2010 is applicable to the ExA in the conduct of this Examination and reporting and to the Secretary of State in decision-making. In compliance with its duties under PSED, the ExA invited representation in a range of difference methods: written format, online via video link, and in person at venues with adequate accessibility provisions.
- 6.6.140. The ExA is satisfied it has fulfilled its duties under PSED.

Human Rights Act 1998 Considerations

- 6.6.141. The Human Rights Act 1998 places the European Convention on Human Rights (ECHR) into UK statute. The ECHR is subscribed to by member states of the Council of Europe. ECHR rights are enforceable in the domestic courts but with final recourse to the European Court of Human Rights. The ECHR, the Council of Europe and the European Court of Human Rights are not EU Institutions and were unaffected by the UK's decision to leave the EU.
- 6.6.142. Schedule 1 to the Human Rights Act 1998 sets out the articles. Articles 6 and 8 and Article 1 of the First Protocol are engaged by the Proposed Development.
- 6.6.143. Paragraph 10 of the CA Guidance states that the Secretary of State must ultimately be persuaded that the purposes for which an order authorises the CA of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. In particular, regard must be given to the provisions of Article 1 of the First Protocol to the ECHR.
- 6.6.144. The Applicant's case to justify interference with Human Rights is set out in the SoR [REP6-015, Section 13]. The Applicant stated that given the inclusion of the CA powers in the draft DCO, there is a possibility that Articles 1 of the First Protocol and Article 8 of persons who hold interests in the Order land would be infringed.
- 6.6.145. In preparing the application, the Applicant has considered Article 1 and the potential infringement of the ECHR rights in consequence of the inclusion of CA powers within the Order and has sought to minimise the amount of land over which it requires powers of CA. The Applicant considers that there would be a very significant public benefit arising from the grant of the Order. The benefit is only realised if the Order is accompanied by the grant of powers of CA.
- 6.6.146. The Applicant has concluded that on balance the significant public benefits outweigh the effects upon persons who own property within the Order Land. For those affected by expropriation or dispossession, compensation is payable in accordance with the Compensation Code. The Applicant considers that the Order would therefore strike the right balance between the public interest in the delivery of the Project and those private rights that would be affected by the Order.
- 6.6.147. In relation to Article 6, the Applicant considers that there has been opportunity to make representations regarding the preparation of the application. The Project has

been extensively publicised, and consultation has taken place with the community, affected landowners and occupiers, and key stakeholders.

- 6.6.148. With regards to Article 8, while rights are proposed to be acquired over land that is used in connection with dwellings such as accesses, driveways and boundary features, and there are residential dwellings in proximity to the Order limits, there are no dwellings within the Order Land. No residents will be displaced by the powers of CA sought in the Order and no residential dwellings are proposed to be acquired or demolished for the purposes of the Proposed Development. Only limited powers of CA and/or temporary use are sought over land used in connection with a dwelling so as to provide access for construction and/or operational purposes.
- 6.6.149. The ExA's overall conclusion relating to Article 1 of the First Protocol is that the purpose for which the CA of the land within the Order limits are being sought, is legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected.
- 6.6.150. In respect of Article 6, the ExA concludes that the process of Examining this application, including the opportunities to submit representations, a series of WQs and the opportunities to be heard at Hearings, all mean that those whose rights may be affected have been given access to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
- 6.6.151. With respect to Article 8, the ExA concurs with the Applicant that the right of the individual to respect for their private and family life, their home and their correspondence would not be adversely affected.

Availability and Adequacy of Funds

- 6.6.152. The Applicant provided a FS [REP4-009] which set out the estimated cost of the Proposed Development to be £3 billion, including costs relating to construction, development, project management, financing and land acquisition. Regarding land acquisition / compensation costs, the Applicant estimated this would be in the region of £14.8 million.
- 6.6.153. This includes advice upon the value of the land or rights/restrictions acquired. compensation for severance and injurious affection pursuant to section 7 of the Compulsory Purchase Act 1965; potential Part 1 Land Compensation Act 1973 claims and section 10 Compulsory Purchase Act 1965 injurious affection claims; and statutory blight. A provision has also been included for losses arising from the exercise of the TP powers sought under the Recommended DCO (Article 33).
- 6.6.154. The FS set out that the Applicant would be responsible for providing funding to cover the abovementioned costs, noting that the Applicant comprises a partnership between RWE Renewables UK Ltd, Enbridge Rampion UK II Limited, and a Macquarie-led consortium, with the backing from their parent companies and investors RWE AG, Enbridge Inc., Macquarie Group, Universities Superannuation Scheme Ltd. and Ontario Ltd. The FS set out that each of these companies have substantial assets and considerable experience in infrastructure development.
- 6.6.155. Further the Applicant has included Article 52 in its draft DCO [REP6-007], (which has been taken through to the Recommended DCO), which provides that CA powers contained in the Recommended DCO must not be exercised unless a guarantee (or an alternative form of security) in respect of the liabilities of the

undertaker to pay compensation in respect of the exercise of the relevant powers is in place.

6.6.156. The form and the amount of the guarantee (or other form of security) must be approved by the Secretary of State. It will be for the Secretary of State to satisfy themselves in relation to the adequacy and amount of the guarantee (or other form of security) provided at the relevant time.

6.6.157. Considering the above and:

- The responses provided by the Applicant [REP3-051] to the ExA's WQs on funding [PD-009].
- The answers provided by the Applicant at CAH1 [REP4-073] in relation to this issue.

the ExA concludes that there is a reasonable prospect of the requisite funds for acquisition becoming available within the necessary timescale, to meet all financial liabilities arising from the exercise of the CA and TP powers sought.

6.7. EXA's CONCLUSIONS ON THE CASE FOR CA AND TP

Land to which authorisation of CA can relate s123(2) of PA2008

6.7.1. The ExA concludes that in accordance with s123(2), there is appropriate provision for CA in the Recommended DCO.

6.7.2. In accordance with the requirement in the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009, the Applicant has included and updated through the Examination as required, a SoR, a FS, Land Plans and a BoR.

Compliance with 122(2) and DCLG Guidance and the Order Limits

6.7.3. While the ExA recognises that the Order limits are very wide, the powers in the Recommended DCO would eventually restrict the Applicant to no more than needed and therefore the net position would be a reduced Order limits and Order land. The Secretary of State has accepted this approach in other Orders.

6.7.4. The ExA is therefore satisfied that the land subject to CA is required for the development to which the development consent relates or is required to facilitate or be incidental to the development and that the land and rights to be taken are no more than is reasonably required for the purposes of the development, is no more than is reasonably necessary and is proportionate and thus complies with s122(2) of PA2008 and DCLG CA Guidance.

The Acquisition of Land Interests by Agreement

6.7.5. S122(3) of the Planning Act 2008 requires there to be a compelling case in the public interest for the CA of land.

6.7.6. Paragraph 25 of the CA Guidance requires applicants to acquire land by negotiation wherever practicable. Part 2 of the Guidance on the Compulsory Purchase Process and Crichel Down Rules (which the CA Guidance references at paragraph 45) makes it clear that compulsory purchase (acquisition) is a last resort and the confirming authority (the Secretary of State) will expect the acquiring authority (the

Applicant) to demonstrate they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement.

- 6.7.7. Taking the land or rights of an individual person or a company is an intrusive power, which can infringe human rights. It is one that government over many years has wrapped around with clear policies and special controls, to ensure that land or rights are not taken capriciously and without clearly demonstrated public benefit, especially where such powers are provided to other private companies.
- 6.7.8. The CA system sits in parallel to the consideration of planning merits by an ExA. Even where the planning merits of the Proposed Development are demonstrated to be policy compliant by an Applicant, an ExA will always consider a CA request within the framework set by the relevant law and guidance. It is possible and appropriate that if legal or policy tests set for CA are not met, that a CA request may be recommended to be denied in part or even in whole, even where the planning merits of the Proposed Development for which it is sought have been clearly proven. In short: if an applicant pays insufficient attention to CA law and policy, it can end up benefitting from a recommendation to consent development, but to deny elements of the CA powers necessary to assemble the land and rights required. The onus is always on the Applicant to make sure that the CA case is made out and that reasonable steps have been taken to progress it.
- 6.7.9. The ExA was concerned at the very start of the Examination on the basis of evidence in the RRs, LRT and the overall number of signed or agreed HoTs that reasonable steps were not being taken by the Applicant to progress negotiations. The ExA made a point of raising this at the PM together with its expectation that this would quickly change as the Examination progressed.
- 6.7.10. From updates of the LRT and the responses to WQs it was evident to the ExA that this wasn't happening, and the oral representations from APs at CAH1 reinforced this view. At the end of the Hearing the ExA was again forced to warn the Applicant that if it did not improve its efforts in this area, it would be difficult for the Secretary of State to conclude that reasonable steps had been taken to obtain all the land and rights necessary for the Proposed Development by negotiation and that a compelling case under s122 of PA2008 for CA had been made.
- 6.7.11. It was only after this final warning that the ExA noted a significant increase in the Applicant's level of engagement with land interests as evidenced by updates to the LRT and detailed LERs which the Applicant submitted on its own volition for certain land interests at Deadlines 5 and 6.
- 6.7.12. Having considered individual objections and issues as set out in Part C, on the basis of the evidence of engagement with land interests provided by the LRT and LERs the ExA is satisfied that the Applicant has demonstrated that it has taken reasonable steps to acquire all of the land and rights included in the Order by agreement in accordance with the CA Guidance and Guidance on the Compulsory Purchase Process and Crichel Down Rules.

Section 122(3) – Whether there is a Compelling Case in the Public Interest

- 6.7.13. The ExA has had regard to all the objections raised by APs. Notwithstanding the objections, the ExA concludes that the public benefits associated with the Proposed

Development would strongly outweigh the private loss which would be suffered by those whose land would be affected by the CA powers sought.

- 6.7.14. The ExA has also taken into account the particular points made by objectors in relation to alternatives. The ExA is, however, satisfied that the Applicant has explored all reasonable alternatives to CA, including modifications to the Proposed Development. The objections raised do not dissuade the ExA from the conclusion that there are no alternatives to the CA powers sought which would be preferred.
- 6.7.15. The Applicant has demonstrated a clear idea of how it intends to use the land, and it has shown that there is a reasonable prospect of the requisite funds, both for CA and implementing the Proposed Development, becoming available.
- 6.7.16. The ExA considers that:
- The development for which the land is sought would be in accordance with national policy as set out in the relevant NPS.
 - The NPS EN-1 2011 states that it is critical that the UK continues to have secure and reliable supplies of electricity as it makes the transition to a low carbon economy and in addition NPS EN-1 2024 (a relevant and important consideration) confirms that the Proposed Development is a CNP and states that *“the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation.”*
 - The need to secure the land and to construct the Proposed Development within a reasonable timeframe represents a significant public benefit to weigh in the balance.
 - The Applicant has taken reasonable steps to acquire all of the land and rights included in the Order by agreement.
 - The private loss to those affected has been mitigated through the selection of the application land and the extent of the land, and the private loss would be outweighed by the public benefit derived from the CA powers sought.
 - The Applicant has explored all reasonable alternatives to CA, and there are no alternatives which ought to be preferred.
 - There is a reasonable prospect that adequate and secure funding would be available to enable the CA within the statutory period following the Order being made.
- 6.7.17. Taking these various factors together, the ExA concludes that there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the final Land Plans Onshore [AS-025 and BoR [REP6-016]. The proposal would thus comply with s122(3) of PA2008.

Statutory Undertakers

- 6.7.18. The ExA's conclusions with regard to PPs and the Recommended DCO are set out in Section 7 of this Recommendation.
- 6.7.19. The ExA is satisfied that s127 of PA2008 was never engaged for SGN and SWS as neither are identified as a landowner. The ExA is also 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 SGN's or SWS's undertakings.

- 6.7.20. Considering outstanding objections from NRIL, TcR, NH and NGET and the fact that they are identified as landowners, the ExA considers that s127 is engaged and has been 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 NRIL's, TcR's, NH's or NGET's undertakings.

National Trust

- 6.7.21. The ExA has not seen evidence that NT's objection to the CA of land rights for the Proposed Development at Washington has been withdrawn. As such, the ExA finds that the CA of land rights in the NT land at Washington would be subject to SPP.
- 6.7.22. However, given that the LER [REP6-101] suggests that agreement has been reached in principle on both the freehold land at Washington and covenant land at Climping, the ExA recommends that if the Secretary of State is minded to grant consent, the Secretary of State may wish to seek an update from the Applicant and the NT, confirming whether or not the objection from the NT has been withdrawn. If parties confirm that the NT's objection has been withdrawn, then the Secretary of State may conclude that the case for CA of the NT's land is made. Until such confirmation has been received the risk of SPP remains.

Common Land

- 6.7.23. Given the limited extent of disturbance on common land, the ExA is satisfied that the effects of the Proposed Development on common land would be temporary and short term only. The ExA therefore concludes that the test set out in s132(3) of the PA2008 is satisfied in this regard. Consequently, the ExA is also in agreement with the Applicant's approach not to include any replacement land within the Order limits.

Open Space

- 6.7.24. Given the limited extent of disturbance on open space land, the ExA is satisfied that the effects of the Proposed Development on public open space would be temporary and short term only. The ExA therefore concludes that the test set out in s132(3) of the PA2008 is satisfied in this regard. Consequently, the ExA is also in agreement with the Applicant's approach not to include any replacement land within the Order limits.

Crown Land in accordance with s135

- 6.7.25. At the close of the Examination, Crown consent had not been received from any of the relevant Crown authorities - TCE, The Forestry Commission and The Secretary of State for Transport. In the absence of consents from the relevant Crown authorities, the ExA concludes that the Order cannot authorise the CA or TP of those plots of land and/ or interests which are Crown land because the requirement in s135(1) and s135(2) of PA2008 have not been met. However, the ExA is not aware of any impediments to the granting of Crown consent by the relevant Crown authorities. The Secretary of State would therefore need to ensure that Crown consents are forthcoming from the relevant Crown authorities prior to the grant of development consent.

Table H – Relevant Crown authorities from which written consent had not been received for the Proposed Development by the end of the Examination

Relevant Crown authority
The Crown Estate
The Forestry Commission
The Secretary of State for Transport

Temporary Possession

- 6.7.26. The ExA is satisfied that the TP powers sought are necessary to implement and maintain the Proposed Development and that adequate compensation provisions are in place in the Recommended DCO.

Public Sector Equality Duty

- 6.7.27. PSED under the EA2010 is applicable to the ExA in the conduct of this Examination and reporting and to the Secretary of State in decision-making. In compliance with its duties under PSED, the ExA invited representation in a range of different methods: written format, online via video link, and in person at venues with adequate accessibility provisions. In that regard the ExA is satisfied it has fulfilled its duties under PSED.

Human Rights

- 6.7.28. The ExA has had regard to the provisions of the HRA1998. These are qualified rights and the weight of national policy in favour of the Proposed Development and the public benefits arising from the Proposed Development means that the interference in the human rights of affected owners and occupiers would be proportionate and justified in the public interest. The ExA is further reassured that the Applicant is seeking to acquire the minimum possible rights and interests that would be needed to construct, operate and maintain the Proposed Development.

Availability and Adequacy of Funds

- 6.7.29. The parent companies of the partnership of which the Applicant is comprised have substantial assets and considerable experience in infrastructure development. In addition, the Applicant has included Article 52 in the draft DCO which provides that CA powers contained in the draft DCO must not be exercised unless a guarantee (or an alternative form of security) in respect of the liabilities of the undertaker to pay compensation in respect of the exercise of the relevant powers is in place. The form and the amount of the guarantee (or other form of security) must be approved by the Secretary of State.
- 6.7.30. The ExA concludes that there is a reasonable prospect of the requisite funds for acquisition becoming available within the necessary timescale, to meet all financial liabilities arising from the exercise of the CA and TP powers sought.

6.8. THE EXA'S RECOMMENDATIONS ON CA AND TP

- 6.8.1. Should the Secretary of State be minded to grant development consent for the Proposed Development, the ExA recommends that:

- The CA powers included in the Recommended DCO (including the currently preferred versions of PPs unless alternatives have been agreed since the close of the Examination) be granted, subject to consents being forthcoming from the relevant Crown authorities in relation to Crown land and the NT's objection being withdrawn (to avoid the need for SPP).
- The TP powers included in the Recommended DCO be granted.
- The powers authorising the CA of SUs' land and rights over land included in the Recommended DCO be granted.
- The powers authorising the extinguishment of rights and removal of apparatus of SUs included in the Recommended DCO be granted.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

- 7.1.1. The application draft DCO [APP-019] and the EM [APP-020] were submitted by the Applicant as part of the application for development consent.
- 7.1.2. The application draft DCO was broadly based on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009; but departed from those clauses to draw upon drafting used in made Orders for similar development under the PA2008, the TWA 1992 and other Acts authorising development. Although there has been a change of approach to the use of Model Provisions since the Localism Act 2011, they remain a starting point for the consideration of the DCO. Precedent cases have also been considered where appropriate. The draft DCO and subsequent iterations are in the form of a Statutory Instrument as required by s117(4) of the PA2008 in view of proposed modifications to statutory provisions.
- 7.1.3. This Section provides a summary of the main changes made to the draft DCO during the Examination, between the application draft DCO and a final draft DCO submitted by the Applicant at Deadline 6 [REP6-007].
- 7.1.4. The ExA reports on the main discussion points and the contentious matters. We do not report on every change made in the updated versions. This is because many amendments were made as a result of typographical or referencing errors; slight revisions of the wording following either discussion between the Applicant and relevant IPs or from their WRs, or as a result of minor changes following WQs [PD-009] and FWQs [PD-012]. The Recommended DCO in Appendix C of this Report incorporates these minor changes.

7.2. THE ORDER AS APPLIED FOR

- 7.2.1. The final draft DCO [REP7-006] is structured as follows:
- Part 1, Articles 1 and 2 are the preliminary matters including how the Order may be cited and when it comes into force, the meaning of various terms used in the Order and the disapplication of other legislation.
 - Part 2, Articles 3 to 8 are the principal powers of the Order, allowing amongst other things, the Undertaker to implement, maintain and, if necessary, transfer the benefits of the Order.
 - Part 3, Articles 9 to 16 convey works provisions including provide for the Undertaker to be able to carry out works to and within streets, alter layouts, to create or improve accesses, to permanently close streets, and to undertake agreements with street authorities, discharge of water, authority to survey land and protective works to buildings, and the provision of powers in relation to trees which need to be removed or lopped in relation to the Proposed Development and any protective works to buildings.
 - Part 4, Articles 17 to 22 refer to the supplemental powers of the Order, to deal with matters such as the discharge of water; to survey and investigate land and to temporarily suspend public access to land.
 - Part 5, Articles 23 to 39 provide for the Undertaker to be able to compulsorily acquire the Order land and rights over/ within it, and to be able to temporarily

use parts of the Order land for the construction or maintenance of the Proposed Development. The provisions provide for compensation to be payable to APs in respect of these powers, where that is not already secured elsewhere. These articles also provide for powers in relation to land and equipment of SUs.

- Part 6, Articles 40 and 41 are concerned with operational provisions in respect to the classification of roads, clearways and traffic regulation measures.
- Part 7, Articles 42 to 58 are concerned with miscellaneous and other general matters including the disapplication of other legislative provisions; operational land in respect of the TCPA1990; service of notices; and arbitration.

7.2.2. There are 16 Schedules to the Order. They are:

- Schedule 1 is the description of the Authorised Development which includes Part 3, the Requirements.
- Schedule 2 lists the streets subject to street works.
- Schedule 3 lists those streets to be temporarily closed.
- Schedule 4 concerns PRoWs; those to be temporarily closed; those to be substituted temporarily and those subject to substitution to be agreed.
- Schedule 5 lists the access to works.
- Schedule 6 lists the land where public access is temporarily suspended,
- Schedule 7 lists the plots as shown on the Land plans [AS-025] which would be subject to CA of new rights.
- Schedule 8 is the modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants.
- Schedule 9 lists the plots as shown on the Land Plans which would be subject to TP.
- Schedule 10 lists the provisions protecting SUs and their apparatus.
- Schedules 11 and 12 are the DMLs; Schedule 11 concerning generation assets and Schedule 12 concerning transmission assets.
- Schedule 13 lists the hedgerows for removal.
- Schedule 14 sets out the provisions for the discharge of Requirements as set out in Schedule 1.
- Schedule 15 is the arbitration rules should the Undertaker and the party responsible for the discharge of the Requirement disagree.
- Schedule 16 lists the certified documents.

7.2.3. The ExA asked 36 WQs [PD-009] and four FWQs [PD-012] in relation to matters concerning the Order. The Applicant responded [REP3-051] and [REP5-119] clarifying matters that we had sought; with suggested changes either accepted or rejected by the Applicant. In addition, the Applicant had also been in discussions with various IPs such that, at each Deadline, updated draft DCOs were submitted into the Examination.

7.3. ITERATIONS OF THE DRAFT DCOs

7.3.1. Table A8 of Appendix A of this Recommendation sets out the iterations of the draft DCO post submission with a summary of the alterations that were made. Such changes are explained within the Applicant's Schedule of Changes [AS-033], [PEPD-011], [REP2-006], [REP3-007], [REP5-009] and [REP6-013] submitted alongside the updated draft DCOs, the most common explanations arise as of questions or comments raised by the ExA or through ongoing discussions with IPs and APs.

- 7.3.2. No IPs raised any concern with the description of the Authorised Development during the Examination, or with the description of the works or the documents to be certified.
- 7.3.3. The EM describes the purpose of the draft DCO as originally submitted, with each of its Articles and Schedules. The EM was updated five times during the Examination as follows: Deadline 2 [REP2-004]; Deadline 3 [REP3-005]; Deadline 4 [REP4-006]; Deadline 5 [REP5-007] and Deadline 6 [REP6-010].

7.4. CONTENTIOUS MATTERS IN THE EXAMINATION

- 7.4.1. The principal contentious matter in the Examination concerned the powers contained within Article 5 (Benefit of the Order) and the draft DML (Schedules 11 and 12), principally expressed by the MMO. This is discussed in section 7.5 below. A number of IPs were initially concerned about the wording of Requirements particularly Requirement 14 concerning BNG. However, these have been largely resolved through updates and changes to the draft DCO during the Examination.

Article 5 – Benefits of the Order

- 7.4.2. The MMOs position is summarised in its written submission at Deadline 4 [REP4-088], following a discussion on the topic at ISH2 [REP4-072]. In summary, the MMO does not consider that it should be bound by Article 5. This is because it says it is a duplication of powers already contained within s72(7) and (8) of the MCAA2009. This states:

- (7) *On an application made by a licensee, the licensing authority which granted the licence-*
 - (a) *may transfer the licence from the licensee to another person; and*
 - (b) *if it does so, must vary the licence accordingly.*
- (8) *A licence may not be transferred except in accordance with subsection (7).*

- 7.4.3. 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. It contends that the MCAA's purpose is precisely to control licensing and that granting the said power in this Order, which would then disapply s72(7) and (8) of the MCAA, not only undermines the primary legislation, but also places additional and unnecessary burdens on the Applicant. The MMO further considers that the MCAA makes no provision for temporary transfers of licences and that the practice is unlawful. Furthermore, 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. The MMO accepts that other Orders have used similar wording. However, it stated at the ISH2 [REP4-072] that it wanted the Secretary of State to consider this a test case of its argument.

- 7.4.4. The Applicant provided a comprehensive response to the MMO at Deadline 5 [REP5-122]. It stated that it is imperative that the Undertaker has certainty over the ability to transfer or grant the benefit of either of the DMLs to a third party contemporaneously with the transfer of the DCO in order that the same entity has the benefit of and liability under both the DCO and the associated DMLs at all material times. If separate entities had the benefit/liability of the DCO and the marine licence it would risk delaying delivery of the project (since both consents are required), create uncertainty in the enforcement regime, and frustrate the "one stop shop" approach to the ability to deem marine licences to be granted alongside the DCO itself.

- 7.4.5. The Applicant noted [REP5-122] that whilst the MMO has indicated that it has never refused an application to transfer a marine licence, it is not prevented from doing so, and further there are no statutory timescales within which a decision must be made on an application. The undertaker could be left waiting for some time for confirmation that its application has indeed been processed with uncertainty as to whether the transferee or lessee does have authority to carry out licensed marine activities.
- 7.4.6. While the ExA accepts that Article 5 of the Order may be more onerous on the Applicant, the ExA considers that Article 5 does not just deal with deemed marine licenses, but all other licences required to construct the Proposed Development, and therefore must be fit for purpose for those eventualities. The ExA's concern is that the MMO's position in this matter strikes at the very heart of the PA2008 and its purpose, which is to provide a simpler one-stop shop process for obtaining consent for national infrastructure projects and to have one legal instrument, the Recommended Order, as its control. The MMO does not make any comment on its position and how this sits within the PA2008.
- 7.4.7. For these reasons, the ExA does not therefore share the MMO's concern and does not recommend it is made exempt from Article 5. However, should the Secretary of State disagree, the following amendments would need to be made to the final draft DCO [REP6-007]:
- Delete Article 5(3).
 - Delete Article 5(6).
 - Remove references to the MMO in Article 5(9)
 - Replace Article 13 with "(13) This Article does not apply to the MMO".
- 7.4.8. Turning to the issue of temporary transfer of the DML for a limited time-period, (Article 5(3)(b)) of the Recommended DCO. At ISH2 [REP4-072] the ExA questioned the MMO whether the MCAA2009 prohibited temporary licence transfers, or whether it was instead just silent on the matter. The MMO response was emphatic that the MCAA2009 did not permit temporary transfers of licences, only to transfer the licence from the licensee to another person. Therefore, Article 5(3)(b) was, in effect, unlawful.
- 7.4.9. In its Deadline 4 written response [REP4-088], the MMO stated that the only precedent for this provision which the MMO has found was in the Sizewell C DCO, (to the extent that whether that power applies to DMLs is unclear). The Sheringham and Dudgeon Order made no such provision for the undertaker to grant a DML for a limited period of time. The MMO further stated that the Applicant had not explained why these provisions are necessary or why a departure from the statutory provisions within the MCAA2009 is justified. The MMO further stated that should the Secretary of State disagree and wish to retain the power for the temporary transfer of the DML for a time-limited period, an additional paragraph would be needed to revert the licence to the undertaker at the end of that period.
- 7.4.10. The Applicant provided a response to the MMO's Deadline 4 written submission at Deadline 5 [REP5-122]. It stated that in other ExA recommendation reports and Secretary of State decision letters, similar MMO representations did not include extensive rationale for the transfer provisions. However, it stated that it was clear that the MMO had presented its argument for exclusion of these provisions in the various Orders, but the ExA and the Secretary of State had been unpersuaded to change them. The Applicant further stated that the inclusion of the transfer

provisions is considered necessary and appropriate for inclusion to facilitate the efficient delivery of the Proposed Development and its subsequent operation, including the required transfer of transmission assets to the Offshore Transmission Owner, without threat of enforcement action due to delays in processing of an application by the MMO.

- 7.4.11. The ExA considers that the key issue between the MMO and the Applicant is whether a time-limited transfer is lawful, rather than whether the Applicant has justified the need for such power and provision in the Recommended DCO. Whilst s72(7) of the MCAA2009 refers to the transfer of a lease, the term “*transfer*” is not defined and does not necessarily imply permanency. Accordingly, the ExA considers that the MCAA2009 does not necessarily prohibit the time-limiting of transfers and the MMO offered no legal explanation where its view has taken precedence. In any event, s72(7) and (8) of the MCAA would be disapplied in the Recommended DCO.
- 7.4.12. Furthermore, the ExA notes that such provisions similar to Article 5(3)(b) have been allowed by the Secretary of State in the Hornsea 4 Order, the East Anglia One North Order and the East Anglia 2 Order. While no such power exists on the Hornsea 3 Order or within the Sheringham and Dudgeon Order, this does not suggest the Secretary of State took a different view on those Orders on the lawfulness of time-limited transfers.
- 7.4.13. The Applicant has stated that the provisions contained in Articles 5(2) and 5(3) are necessary to construct the Proposed Development. The ExA has no reason to disagree and considers there to be no obvious or legal reason why Article 5(3)(b) should be removed for the Order. Therefore, the ExA does not accept the MMO’s position on this matter. However, should the Secretary of State disagree, Article 5(3)(b) can be excised without any other consequence for the Article as drafted.
- 7.4.14. The MMO [REP4-088] stated that should the Secretary of State disagree with its position on the matters concerning Article 5, it nonetheless objected to the drafting of Article 5 which it felt gave too much leeway to the Undertaker (earlier versions of Articles 5(2) and 5(3) of the draft DCO did not exclude the DML, which the MMO deemed as unprecedented). In addition, the MMO felt that Article 5 in practice excluded the MMO from the process of an application to transfer or grant a licence temporarily, and there was no obligation on the Secretary of State to seek the views of or take into consideration its comments.
- 7.4.15. To resolve these concerns, the ExA put forward a number of suggested changes to Article 5 in its Schedule of Changes to the draft DCO [PD-013], which are set out in Table I below; the reference column indicating the list number within the ExA’s Schedule of Changes.

Table I - Summary of ExA’s Schedule of Changes to the draft DCO in respect to Article 5

No.	Ref	Paragraph in Question	Summary of Change	App Response [REP5-121]	MMO Response [REP5-146]
1	3, 4, 5	Article 5(2)(b), 5(3)(b) and 5(6)	Replace “ <i>grant</i> ” with “ <i>transfer</i> ” in respect to Articles 5(2)(b), 5(3)(b) and 5(6) for temporary	Not amended	Continues to support the sole use of “ <i>transfer</i> ”

No.	Ref	Paragraph in Question	Summary of Change	App Response [REP5-121]	MMO Response [REP5-146]
			transfers. This is discussed in more detail below.		
2	3	Article 5(2)(a) and (b)	Insert “(excluding the deemed marine licences)” in relation to the powers in the Article, which the MMO stated [REP4-088] were unprecedented.	Amended	Supported
3	4	Article 5(3)(a) and (b)	Insert “granted under Schedules 11 and 12 of this Order” to reinforce that the DMLs mean Schedules 11 and 12 of the Recommended DCO.	Amended	Supported
4	5	Article 5(6)	Insert “on receipt of a request under paragraphs (2) and (3) the Secretary of State must consult the MMO and must have regard to its response...” to strengthen the role of the MMO in the licence transfer process.	Amended with caveat of 28-day time period	Supported
5	6	Article 5(8)	Insert new subparagraph (d) “in the cases of (a)(b) and (c) the MMO has been consulted and has raised no objections.	Not amended but removed subparagraph (b) instead.	Not commented

7.4.16. The above changes sought to tighten the Article and give greater assurance to the MMO should a transfer be requested. The Applicant accepted all (except No.1 above). The ExA has noted the MMO’s response to these changes [REP5-146] and considers the matters resolved.

7.4.17. In respect to Article 5(8), which relates to the exclusions where Articles 5(2) and 5(3) would not apply, the draft DCO at Deadline 4 [REP4-004] included a subparagraph (b) which allowed a transfer where “*the transferee or lessee is a holding company or subsidiary of the Undertaker.*” The ExA expressed concern [PD-013] that it was not clear whether such a holding company or subsidiary of the undertaker is a responsible holder of a DML. The ExA’s solution was to ensure such provision had the approval of the MMO through the insertion of a new subparagraph (d). The MMO in its Deadline 5 response [REP5-146] stated that it did not understand the ExA’s reasoning for the change. However, the Applicant response was to delete the offending subparagraph (b) instead. The ExA is content with this change and considers the MMO to be equally satisfied.

7.4.18. Turning to this issue of the terms “*transfer*” versus “*grant*”. The MMO considered [REP4-088] both a permanent and temporary granting of the licence should refer to “*transfer*” because the word “*grant*” suggests the Applicant is in effect taking over the responsibilities of the MMO as the regulator; that is to say, only the MMO should have the power to “*grant*” marine licences.

7.4.19. In its response at Deadline 5 [REP5-121], the Applicant stated that the terminology is considered appropriate in the context of an arrangement whereby a third party, a lessee, is afforded the ability to exercise some or all of the powers under the Order

for a limited period of time, but with the undertaker still retaining a residual interest, benefit and liability according to the terms of the grant. The Applicant stated that the term “*transfer*” relates to the transfer of the entirety of the benefit and liability being transferred. The Applicant stated that the term “*grant*” is consistent with Article 5(1)(b) of the Model Provisions and with the wording in Article 5(2) of the Sheringham and Dudgeon Order in addition to numerous previously made DCOs for offshore wind farms and other infrastructure developments. The MMO retains its objection at the close of the Examination [REP5-146 and REP6-302].

- 7.4.20. The Cambridge Dictionary defines the verb “*grant*” as “*to give or to allow someone something, usually in an official way*”. The term “*transfer*” is defined as “*to make something the legal property of another person*”. Looking at the definitions in their basic terms, the ExA considers that the term “*transfer*” implies a degree of permanency within its meaning, whereas “*grant*” does not. In such circumstances, it would therefore be correct that a temporary licence should be “*granted*” and not “*transferred*”.
- 7.4.21. The Secretary of State will note that there appears to be no precedence for any previous Orders that have substituted the word “*grant*” with “*transfer*” in respect to temporary leases. Indeed, the MMO accepts, as stated above, that this is a test case for the Secretary of State to consider. Because of this and the dictionary definitions discussed above, the ExA is not, on the evidence submitted, convinced that Article 5 in this Order, or equivalent such Articles in previous Orders have been incorrectly drafted.
- 7.4.22. The ExA therefore does not accept the MMO’s argument that the term “*grant*” should be substituted with “*transfer*” in respect to Articles 5(2)(b), 5(3)(b) and 5(6). However, the Secretary of State is at liberty to find otherwise and may wish to make this change if they disagree with the ExA.
- 7.4.23. In its Deadline 6 submission [REP6-280] the MMO included in Annex 1 its preferred version of Article 5. The ExA had no previous site of this alternative wording. The MMO stated that it submitted this alternative version to the Applicant on a without prejudice basis on 12 June 2024. The ExA notes that neither the Applicant’s SoCG with the MMO submitted at Deadline 5 [REP5-100], which was 9 July 2024, nor the Applicant’s response to the MMO’s Deadline 4 submissions [REP5-122] and Deadline 5 submissions [REP6-274] mention this alternative wording or provide any response.
- 7.4.24. The MMO has not identified the specific differences between Article 5 of the final draft DCO [REP6-007] and the MMO’s alternative. Indeed, the MMO only stated that having received no response from the Applicant, the MMO provides it to the ExA for consideration alongside previous responses on this issue. From an initial inspection, the ExA notes that the MMO has removed Article 5(3)(b) which permits the temporary transfer of a DML. It also appears to have added significant new paragraphs (4) to (8) and (10) as well as new paragraph (16). Moreover, it appears to largely ignore the required changes the MMO sought during the Examination and reported on in the ExA’s Scheduled Changes to the draft DCO [PD-013].
- 7.4.25. The Applicant has not had the opportunity to respond to this alternative wording, and the Secretary of State may wish to seek further information from the Applicant on it. However, the ExA does not propose amending Article 5 as set out in the final draft DCO [REP6-007]. The MMO has not cited other Orders where such wording has been used, and it has not adequately justified why the alternative wording

should replace its extant counterpart. The ExA further considers the removal of Article 5(3)(b) is without merit or justification. The ExA, therefore does not consider any further action is required.

Schedules 11 and 12 – DML (MMO Matters)

- 7.4.26. In all written submissions up to Deadline 4 [AS-005, REP1-056, REP2-035, REP3-076, REP4-088], the MMO held concerns over the wording of Schedules 11 and 12 of the draft DCO [REP4-004] and requested changes. The ExA considered that at that point, the Applicant had not properly addressed each individual change and thus in our Schedule of Changes to the draft DCO [PD-013], the ExA sought to set these out individually and have the Applicant respond to each one. These are set out in the Table J below.

Table J - Summary of ExA's Consultation Draft DCO on Schedules 11 and 12 on MMO Issues

No.	Ref	Paragraph in Question	Summary of Change	App Response [REP5-121]	MMO Response [REP5-146]
1	20, 22	Schedules 11 and 12, Part 1 Paragraph 9 Part 2, Condition 3(5)	Replace " <i>is unlikely to</i> " with more affirmative wording " <i>will not</i> ".	No (see REP5-122]	Continues to request change.
2	21	Schedules 11 and 12, Part 2, Condition 3(2)	Replace " <i>submitted</i> " with more affirmative wording " <i>approved</i> ".	Amended	Supported
3	26	Schedules 11 and 12, Part 2, Condition 16(2)(b)	Insert additional wording " <i>and any other species or features</i> ".	Not changed	Continues to request change.

- 7.4.27. In respect to change no.1 from the above list, the MMO stated [REP4-088] that it wished to see strengthening of the wording for clarity and to ensure that it is able to regulate sufficiently robustly. The Applicant considers that the change proposed is unnecessary, because the wording of the provision echoes the wording of the EIA Regulations in requiring consideration of the LSE of the Proposed Development on the environment, rather than establishing absolute certainty on what they will be. The Applicant also cites this wording on other Orders, notably Sheringham and Dudgeon. The MMO continues to wish this change to be made. The ExA concurs with the Applicant and the proposed change is not advanced.

- 7.4.28. In respect to the additional wording sought to Schedules 11 and 12, Condition 16(2)(b) (change no.3 on the above list), the MMO stated [REP4-088] that the wording as currently drafted in the final draft DCO [REP6-007] is too limiting. The Applicant stated in its response [REP5-122] that it is not considered that the amendment proposed is appropriate. The surveys must be in accordance with the outline in principle monitoring plan, and this condition reflects the content of that document, and there are no other species or features detailed in the outline in-principle monitoring plan that would be 'caught' by the additional wording. The MMO remains of the view [REP6-302] that the wording should be changed. The ExA accepts the Applicant's answer and does not advance the Recommendation.

- 7.4.29. The Secretary of State will note from the MMO's Closing Statement Cover Letter submitted at Deadline 6 [REP6-302] that it remains in dispute over the final wording

of Schedules 11 and 12 (the DML). It has also submitted further changes required to Schedules 11 and 12 not previously seen by the ExA and as such, no response from the Applicant has been made other than to acknowledge receipt of them but needing time to consider them. The additional changes sought by the MMO are as follows:

- i. In respect to disposal sites, insertion of wording to Schedule 11 Part 1, Paragraph 2(b); Part 2 Condition 9(3); Schedule 12 Part 1 Paragraph 2(b) and Paragraph 2(c); Part 2 Paragraph 9(3).
- ii. In respect to chemicals, insertion of new wording to Schedules 11 and 12, Part 1, Condition 9(1).
- iii. In respect to Marine Noise Registry, insertion of new wording to Schedules 11 and 12, Part 2 Condition 25(1)(b). The MMO stated that the Applicant confirmed that this wording would be included in the final draft DCO [REP6-007] however it was not.
- iv. Additional piling condition for herring spawn between 1 November and 31 January (this is discussed further in Section 3).

7.4.30. The ExA is disappointed that both parties were unable to resolve differences before the close of the Examination. Indeed, the ExA considers that many of these issues should have been resolved many months ago. Nevertheless, because discussions were still ongoing at the close of the Examination, and it appears that the Applicant is potentially open to further amendments, the ExA considers that it has no choice and regrettably must recommend to the Secretary of State that they seek further information from the MMO and the Applicant on the status of Schedules 11 and 12. Notwithstanding, the ExA has made a determination of the current DML should the Secretary of State wish to make the Order, and have made suggested alterations to the DML as discussed below.

Schedules 11 and 12 – DML (Natural England/Historic England Matters)

7.4.31. Although this section of the Recommendation deals primarily with the MMO's concerns with the final draft DCO [REP6-007], it seems prudent to discuss here the additional changes to Schedules 11 and 12 requested by NE and HE.

7.4.32. As discussed in much further detail in Section 3 of this Recommendation, the ExA issued a Rule 17 request (reference change no.4) [PD-017] asking the Applicant's view to the imposition of an additional condition to Schedules 11 and 12 restricting piling between the months of March to July, as insufficient evidence has been submitted from the Applicant to justify its absence from the final draft DCO [REP6-007]. This additional suggested change represents the views of NE and the MMO.

7.4.33. The Applicant responded [REP6-275] stating that such a restriction would be disproportionate. It stated that the implementation of a piling restriction would have a direct effect on the construction schedule of the project by prohibiting construction in the months of the year with the most accommodating weather conditions. Until the final design of the turbines and foundations, and until comprehensive geotechnical surveys are completed, it is difficult to determine with a high level of confidence, what the magnitude of the impacts on the construction schedule would be. However, preliminary construction modelling has strongly indicated that a piling restriction would be extremely challenging, leading to an additional year or more of offshore installation activity being required.

- 7.4.34. For the reasons set out in much further detail Section 3, the ExA does not accept the Applicant's explanation and recommends additional conditions to Schedules 11 and 12 to the Recommended DCO as set out below in the ExA's Recommended Changes. This is because harm to black seabream cannot, in the ExA's view, be ruled out and an alternative exists which is the imposition of the piling restriction. However, should the Secretary of State disagree, the ExA considers that the options are:
- i. To not include the suggested piling condition if the Secretary of State is satisfied that there would be no harm to black seabream.
 - ii. To not include the suggested piling condition and replace with Schedule 18 [REP6-267] should the Secretary of State accept there would be harm to black seabream but that all alternatives have been explored and can be discounted. In this circumstance, the Secretary of State will be aware that NE were at Deadline 6 [REP6-287] not content with the wording of Schedule 18 and the Secretary of State would be advised to seek further information from the Applicant and NE on updates.
- 7.4.35. In the ExA's Suggested Changes to the draft DCO [PD-013], the ExA recommended (ref change no.23) additional wording to Schedules 11 and 12, Part 2, Condition 11(1)(a) in respect to microsites. The Applicant responded [REP5-121] stating that it had already addressed these concerns with new wording to the draft DCO at Deadline 4 [REP5-004]. NE stated in its response at Deadline 6 [REP6-287] that it supported the proposed wording in the final draft DCO [REP6-007]. This issue is considered to be resolved.
- 7.4.36. In addition, the ExA suggested change no.25 [PD-013] in respect to Schedules 11 and 12, Part 2, Condition 11(2)(c) requiring the submission of analysis of survey data and a timetable for reporting be reduced from six months to four months. HE considers this to be a more realistic timescales and reflects the same timescale in the Sheringham and Dudgeon Order (e.g. Schedule 10, Part 2, Condition 13(1)(e) of that Order). The Applicant responded [REP5-121] stating that it is not clear why the survey information should be provided to the MMO within four months rather than six. The Applicant stated that no reasoning for this request has been provided by HE and that it is not considered that the survey results are time sensitive, and that the Applicant will have a significant quantity of data to process following the surveys, including requiring specialist third party input. In this context a six month period is both more achievable and reduces the risk of delay for the project.
- 7.4.37. The Applicant has not specifically addressed why the Secretary of State accepted a four month timescale on the Sheringham and Dudgeon Order and why specifically, it should not be applied to this Order. Moreover, the ExA does not consider that the Applicant has provided any compelling reason why four months should not be applied. The ExA therefore recommends Condition 11(2)(c) be amended.
- 7.4.38. In addition to the above, NE has from the outset of the application sought amendments to Schedules 11 and 12, Part 2, Conditions 11(1)(c)(i). NE cite East Anglia One North and Two where maximum piling scenarios and maximum hammer energy are secured by way of similar conditions in the DML.
- 7.4.39. The issue is discussed further in Section 3 of this Recommendation. There, we note the Applicant's response to NE [REP1-017] was that the proposed construction method statement, which is the subject of Condition 11(1)(c) must include details of piling methods for approval and therefore the submission and approval of this

document will deal with the maximum hammer energies and ensure that they do not exceed with those assessed in the ES.

- 7.4.40. Notwithstanding, the ExA considers this is not sufficiently tight as it would be possible for maximum hammer energies to exceed the ES. The ExA therefore concurs with NE and proposes additional wording inserted as 11(1)(l) to ensure maximum hammer energies do not exceed those as set out in the ES; wording of which reflects that accepted by the Secretary of State on the east Anglia One North Order.

7.5. ExA's CONSULTATION DRAFT DCO

- 7.5.1. The ExA issued its Schedule of Changes to the draft DCO on 18 June 2024 [PD-013]. This set out 26 recommended changes. A further four recommended changes were sent to the Applicant for consultation [PD-017]. The Applicant responded at Deadline 5 [REP5-121] and Deadline 6 [REP6-275] respectively, accepting and amending some of the suggested changes, whilst rejecting others with an explanation. The ExA summaries the suggested changes below in table 7.*, together with the Applicant's response and whether the ExA accepts the Applicant's answer or not.

- 7.5.2. Table K concerns all other matters not including those matters concerning Article 5 and Schedules 11, 12, 17 and 18 which are discussed above.

Table K - Summary of ExA's Schedule of Changes to the draft DCO, whether the change was accepted by the Applicant, and the ExA's response to the reasons given

No.	Ref	Article/Schedule	Summary of Change	Did Applicant Change DCO?	ExA's Response to Reason
1	1 & 2	Part 1, Article 2 <i>Interpretations</i>	Insertion of wording	YES	ACCEPT
2	7	Schedule 1, Part 3, Requirement 1 <i>Time limit</i>	Change seven years to five years	NO	ACCEPT
3	8 & 27	Schedule 1, Part 3, Requirement 8(1) <i>Site-Specific Plan for the Detailed design approval onshore substation at Oakendene</i>	Amendments to provide comprehensive site specific plan for the Oakendene substation	NO, but offered preferred wording were the ExA minded to proceed.	ACCEPT APPLICANT'S ALTERNATIVE WORDING
4	9	Schedule 1, Part 3, Requirement 9 <i>Detailed design approval – extension to National Grid substation</i>	Amendment to include operation noise monitoring	NO (But has suggested amendment to Req 29)	ACCEPT APPLICANT'S ALTERNATIVE REQ 29 AMENDMENT – BUT SLIGHT CHANGE TO REQ 9

No.	Ref	Article/Schedule	Summary of Change	Did Applicant Change DCO?	ExA's Response to Reason
5	10	Schedule 1, Part 3, Requirement 14 <i>Biodiversity Net Gain</i>	Amendments to wording as advanced by SDNPA and West Sussex CC	YES (mostly)	ACCEPT with additional wording (see below)
6	11	Schedule 1, Part 3, Requirement 19 (1) <i>Onshore archaeology</i>	Amended wording	YES	ACCEPT
7	12	Schedule 1, Part 3, Requirement 19 (5) <i>Onshore archaeology</i>	Amended wording	YES (with some variances)	ACCEPT
8	28	Schedule 1, Part 3, Requirement 23(2)(b) <i>Onshore construction method statement</i>	Amendments to wording	NO	ACCEPT
9	14	Schedule 1, Part 3, Requirement 35 <i>Onshore Decommissioning</i> Schedule 1, Part 3, Requirement 22(4) <i>Code of Construction Practice</i>	Amendment to include decommissioning plan for mineral safeguard areas.	NO	ACCEPT
10	29	Schedule 1, Part 3, Requirement 39 <i>Instrument flight procedures</i>	Amendments to wording	YES	ACCEPT
11	15	NEW Schedule 1, Part 3, New Requirement 41 <i>Site-Specific Plans for the detailed design approval temporary construction compounds at Washington and Climping</i>	Creation of Requirement for the details of the construction compounds	NO, but offered preferred wording were the ExA minded to proceed.	ACCEPT APPLICANT'S ALTERNATIVE WORDING (as Req 45)
12	16 & 13	NEW Schedule 1, Part 3, New Requirement 42 <i>Crossing Schedule</i>	Creation of separate Requirement for the Crossing Schedule	NO, but offered preferred wording were the ExA minded to proceed.	ACCEPT APPLICANT'S ALTERNATIVE WORDING (as Req 46)
13	17	NEW Schedule 1, Part 3, New Requirement 43	Creation of Requirement	YES (as Req 44 in final draft DC) [REP6-007].	ACCEPT

No.	Ref	Article/Schedule	Summary of Change	Did Applicant Change DCO?	ExA's Response to Reason
		<i>European Protected Species</i>			
14	18	NEW Schedule 1, Part 3, New Requirement 44 <i>Commitments Register</i>	Creation of Requirement	NO	ACCEPT
15	19	NEW Schedule 1, Part 3, Potential New Requirement 45 or amendments to Requirement 22 <i>Noise, Dust and Air Quality Monitoring</i>	Creation of Requirement	NO	ACCEPT

7.5.3. In respect to Schedule 1, Part 3, Requirement 8(1) (change no.3), the ExA remains of the view that details of the Oakendene substation site should be contained within one controlled document rather than spread across a number of other documents and Requirements. This is because the construction of the Oakendene substation site was of great concern to a large number of IPs including the local authorities. The ExA considers one comprehensive plan dealing with all matters concerning design, traffic and vegetation management would be of considerable benefit to the IPs concerned in understanding those matters. West Sussex CC [REP6-280] has requested that the LHA be added as a consultee and the ExA is content to make this amendment. The ExA does not consider the Applicant needs to be consulted on this very minor change.

7.5.4. The ExA notes the Applicant's Deadline 5 response [REP5-121] in which it has suggested alternative wording. The ExA considers the wording to adequately address its concerns and will advance that in the Recommended DCO.

7.5.5. Turning to Schedule 1, Part 3, Requirement 9 (change no.4), the ExA again notes the Applicant's alternative solution to addressing the ExA's concerns by proposing additional wording to Requirement 29, which the ExA has advanced in the Recommended DCO. This change will address concerns raised by Bolney PC in respect to any additional low-frequency noise associated with the increased use of the Bolney substation. West Sussex CC in its Deadline 6 submission [REP6-280] requested that the Requirement also list the LHA as a consultee. The ExA has no objection to making this amendment. As the change is of a minor nature, the ExA does not consider the Secretary of State needs to seek further information from the Applicant on this alteration.

7.5.6. In respect to Schedule 1, Part 3, Requirement 14 (change no.5), NE has recommended at Deadline 6 [REP6-287] that the SNCB is added as a consultee. The ExA has no objection to making this amendment. As the change is of a minor nature, the ExA does not consider the Secretary of State needs to seek further information from the Applicant on this alteration.

- 7.5.7. As with the Oakendene substation, the ExA considers site-specific and comprehensive plans for the large construction sites at Washington and Climping (change no.11) would be of considerable benefit for the local authority and the SDNPA, together with IPs and the local community in being able to access in one place, as opposed to multiple documents and Requirements, and understand the implications of the Proposed Development on those sites. The ExA again notes the Applicant's proposed wording should the ExA disagree with the Applicant's response, which the ExA finds acceptable and it will be advanced in the Recommended DCO.
- 7.5.8. Similarly in respect to a new Requirement for a Crossing Schedule (change no.12), as has been discussed in section 3 of the Recommendation, the use of HDD and open trench was of considerable concern to a number of IPs. Although the Applicant stated [REP5-121] that it did not consider the crossing schedules remain indicative, there is scope at the detailed design stage for additional HDD crossing to come forward, particularly around the 'green lane' area of tree planting. The ExA considers the Crossing Schedule should, because of its importance and sensitivity, be brought to the fore in its own requirement rather than as an appendix to Requirement 22, the CoCP. The ExA again notes the Applicant's proposed wording should the ExA disagree with the Applicant's response, which the ExA find acceptable and it will be advanced in the Recommended DCO. Subsequently, Requirement 22(4)(p) is recommended to be deleted.
- 7.5.9. The ExA makes no comments on those changes which were accepted in full by the Applicant. Where the Applicant proposed alternative wording, the ExA found that such wording was acceptable and overcame our initial concerns. In respect to change nos. 8, 9 and 19 from the above table, the ExA was satisfied with the Applicant's response provided at Deadline 5 [REP5-121] and has decided not to proceed with recommending the changes.
- 7.5.10. In the ExA's Scheduled Changes to the draft DCO [PD-013], the ExA suggested the inclusion of a new Requirement concerning the approval of a Commitments Register (change no.14). This is because the Commitments Register has been a considerably important issue throughout the Examination, with IPs concerned about the robustness of a large number of them. The Applicant responded [REP5-121] considering that all commitments were now up-to-date and had responded to concerns of IPs. However, at Deadline 6, the MMO [REP6-302], Horsham DC [REP6-277] and NE [REP6-297] continued to have concerns with them. West Sussex CC [REP6-280], while offering no specific commentary on the commitments themselves, nevertheless offered support for the inclusion of a Requirement for it.
- 7.5.11. The ExA has held the Commitments Register in high regard as a critically important document, as it provides a singular place of all the commitments the Applicant will adhere to in mitigating or reducing the impact of the Proposed Development. It has also become a useful "go-to" for the IPs rather than having to scroll through all the other draft control documents. The fact that IPs such as Horsham DC and NE remain concerned about some of the commitments presents the ExA with somewhat of a dilemma as to whether to recommend a Requirement seeking its approval, which would allow IPs a chance to further shape its contents before the other Requirements are submitted for discharge.
- 7.5.12. However, having considered the matter carefully, the ExA has decided not to proceed with the change. While a useful singular document, the ExA agrees with the Applicant that the commitments in the Commitments Register will be included as

part of the control documents subject to other Requirements, and to insist the Commitments Register is also discharged may be doing the same job twice. The ExA considers that such a document might also be difficult to sign off, especially if all relevant authorities are having to do it. The ExA is also minded that the Commitments Register is a Certified Document in Schedule 16 of the Recommended DCO, and thus forms part of the application suite of documents, and such a departure from it in the control documents would be prohibited in any event. The final submitted Commitments Register at Deadline 6 [REP6-***] also includes a comforting statement which states that *“in the event that there is an inconsistency in the commitments in this register and the detail provided in the related Application Documents referenced herein, the least environmentally damaging scenario shall prevail”*.

7.5.13. Therefore, and as discussed in Section 3 of this Recommendation, while there are outstanding issues from the MMO, Horsham DC and NE on the wording of some of the commitments, they are not considered to amount to objections or represent serious concerns, and those IPs will have the opportunity to influence and discharge the final commitments contained within the control documents subject to the other Requirements. Therefore the ExA has decided not to recommend a Requirement for a Commitments Register.

7.5.14. Accordingly, the ExA’s Suggested Changes to the draft DCO [PD-013] nos. 3, 4, 5, 11 and 12 from Table 7.* above will be taken forward as amendments to the final draft DCO [REP6-007] in the Recommended DCO.

7.6. PROTECTIVE PROVISIONS

7.6.1. As has become a recurring theme in this Recommendation, the ExA was, at the close of the Examination, disappointed with the progress of negotiations between the Applicant and with SUs, and particularly that Protective Provisions had not been agreed between the Applicant and with Network Rail, NH and National Grid. The ExA will, nonetheless, report on the differences between the parties below and set out those alterations to Schedule 10 of the Recommended DCO sought by the SUs that the ExA considers necessary. The Applicant has confirmed in its Deadline 6 submission [REP6-010] that it remains in talks with all SUs to agree Protective Provisions.

7.6.2. Schedule 10 of the Recommended DCO sets out the Protective Provisions. It comprises protection for:

- Electricity, Gas, Water and Sewerage Undertakers (Part 1).
- Operators of Electronic Communications Code Networks (Part 2).
- National Grid Electricity Transmission PLC as electricity undertaker (Part 3).
- Southern Electric Power Distribution PLC as electricity undertaker (Part 4).
- SGN PLC as gas undertaker (Part 5).
- Railway Interests (Part 6).
- National Highways Limited (Part 7).

7.6.3. SGN confirmed [REP6-303] that it was in the process of reaching a SA with the Applicant and on completion of that, it would withdraw any formal concerns with the application. The ExA confirms that its version of the Protective Provisions submitted at Deadline 6 aligns with that contained in the final draft DCO [REP6-007]. SWS confirmed in its written submission at Deadline 6 [REP6-310] that it continues to negotiate with the Applicant on Protective Provisions in respect of the interface

between its apparatus and the DCO application; that discussions with the Applicant are progressing positively and are advanced, but the parties are not yet agreed. SWS further stated it is confident that an agreement can be reached by the end of the Recommendation period.

7.6.4. In the Applicant's Closing Statement [REP6-233], the Applicant confirms Protective Provisions have been agreed with the following SUs:

- Scottish and Southern Electricity.
- SGN.
- UKPN (in the form of a SA).

7.6.5. Accordingly, and given no other communications received, the ExA recommends the wording in Parts 2, 4 and 5 with no changes.

National Highways

7.6.6. NH remain concerned over its wish to be excluded from Articles 11 and 15 of the final draft DCO [REP6-007]; and to protect its assets and its statutory responsibilities from the Proposed Development in the form of securing acceptable Protective Provisions. Matters concerning the CA of its land adjacent to the A27 are dealt with in Section 6 of this Recommendation.

7.6.7. In its Deadline 6 submission [REP6-284 and REP6-285], NH has requested the following changes to Schedule 10, Part 7 of the final draft DCO [REP6-007] which it says are necessary to protect assets and without them, would compromise NH' ability to carry out its statutory functions:

- i. Insertion of "the bond sum", "the cash surety" and "detailed local operating agreement" definitions into Paragraph 2 of Part 7.
- ii. Alterations to wording to the interpretations of "specified works" and "strategic road network" (SRN).
- iii. Insertion of new Paragraph (after Paragraph 3) on restrictions of works within the SRN.
- iv. Insertion of new Paragraph (after Paragraph 4) restricting works outside of the Order limits.
- v. Amended wording to Paragraph 5(1)(a) and (c)
- vi. Insertion of new Paragraph 5(1)(c)(v) in respect to details of walking, cycling and horse riding.
- vii. Insertion of new Paragraph 5(2) in respect to the exercising of powers on Articles set out in the final draft DCO.
- viii. Amended wording to existing Paragraph 5(2) which reflects the inserted wording in point (vi) above.
- ix. Insertion of new Paragraphs 6(7) and (8) (with current Paragraphs (7) and (8) becoming (9) and (10) in respect to construction of the specified works regarding notification periods and payments should NH need to undertake any works itself.
- x. Insertion of new Paragraph (after Paragraph 6(8) (which would be new Paragraph 12) regarding the need for both parties to enter into a detailed operating agreement.
- xi. Insertion of new Paragraph 8(5) in respect matters concerning the bond sum.
- xii. Insertion of new Paragraph (after Paragraph 8) regarding notification periods of opening of the SRN to the public.

- xiii. Insertion of new Paragraph (after Paragraph 9) regarding the need to regulate the defects period.
- xiv. Insertion of new Paragraph (after Paragraph 10) in respect to security matters.
- xv. Insertion of new Paragraph (after Paragraph 10) in respect to insurance matters.
- xvi. Insertion of new Paragraph (after Paragraph 10) in respect to indemnity matters.
- xvii. Insertion of new Paragraph (after Paragraph 10) in respect to maintenance of the specified works.
- xviii. Insertion of new Paragraph (after Paragraph 10) in respect to powers of land without the consent of NH.

7.6.8. The Applicant has not included these changes because it considers they are unnecessary at this stage, but engagement remains ongoing. The Applicant stated [REP6-010 and REP6-233] that it does not agree with NH that the Recommended DCO should include Protective Provisions that are excessively onerous in the context of the Proposed Development. The Applicant's position is that the Protective Provisions should reflect the level of protection required to safeguard NH' statutory undertaking and as such the 'standard' protective provisions submitted by NH are not appropriate for inclusion in the DCO.

7.6.9. The Applicant further stated the following [REP6-233]:

- There are no works to the SRN and therefore no requirement needed to issue a bond or security to NH in advance of any works. To do so would place unnecessary and unwarranted financial obligation on the Applicant with the effect of adversely impacting its ability to deliver the Proposed Development.
- There are no permanent works to the SRN, there is no requirement for it as developer to pay to NH a commuted lump sum in advance of exercising the DCO powers to implement the Proposed Development.
- The processes for works to the SRN are included in the Protective Provisions, and the form of protective provisions as suggested by NH are inappropriate and not relevant.
- The Applicant has proposed a form of SA to NH to address commercial concerns. The Applicant proposes to continue engagement with NH and will update the Secretary of State as necessary on any further progress.

7.6.10. However, while the details of the Sheringham and Dudgeon case are not before this ExA, the changes sought by NH were included in that Order and thus accepted by the Secretary of State. Whilst each case should be determined on its merits, the Applicant does not advance any substantive evidence as to why the final draft DCO [REP6-007] has not included similar wording and why this Order should adopt an alternative approach.

7.6.11. In respect of requested change (x) in the above list, the Sheringham and Dudgeon Order makes no such provision, and NH has not specifically explained or justified why it is necessary in this case. Accordingly, this change is not advanced in the Recommended DCO. Subsequently, the definition of a detailed local operating agreement is considered unnecessary (change (i)) and this is also not recommended by the ExA. Requested change (v) in respect to the amendment to the minor amendment to Paragraph 5(1)(a) is similarly not carried forward for the same reasons specified above.

- 7.6.12. In respect to Articles 11 (temporary closure of street) and 15 (power to alter layout etc, of streets), neither NH nor the Applicant provided sufficient explanation in response to the ExA's FWQ DCO 2.2 [PD-013] as to why NH should be specifically excluded from this Article. Both parties, particularly NH [REP5-142] instead alluded to continued and ongoing discussions but that it was expecting construction works impacting the SRN to be dealt with through the Outline Construction Management Plan and that NH must retain its rights and duties as strategic highway authority.
- 7.6.13. The ExA considers that the relevant control documents contained within Schedule 1, Part 3 Requirements together with suitable Protective Provisions within Schedule 10 Part 7 of the Order should be sufficient to protect the assets and statutory functions of NH without need to amend Articles 11 and 15. The Secretary of State will be further aware that the equivalent to Article 11 in the Sheringham and Dudgeon Order (Article 10) did not exclude NH while there is no provision for powers similar to Article 15.
- 7.6.14. The ExA thus concurs with NH and is satisfied that, with the exception of those discussed above, the above changes are considered necessary in the interests of consistency with other Orders to protect the apparatus and operation of the SRN, and has included these changes in the Recommended DCO.

Network Rail

- 7.6.15. Network Rail's concerns throughout the Examination has been to protect its assets and its statutory responsibilities from the effects of the Proposed Development and has sought acceptable Protective Provisions. In its Deadline 6 submission [REP6-316], Network Rail has requested the following changes from that set out in the final draft DCO [REP6-007] which in all cases, says are necessary to protect assets and without them, would compromise Network Rail's ability to carry out its statutory functions:
- i. Insert new Schedule 10, Part 6 Paragraph 4 in respect to the exercising of powers on Articles.
 - ii. Replace current Paragraph 4(2) with additional wording in respect to not exercising certain powers; and insert new subparagraphs (3) and (4) to tighten up powers of CA and Network Rail's role to operate the railway.
 - iii. Insert additional wording to Paragraph 15 in respect to the payments and costs, and removal of the Applicant's wording restricting such payments to no more that £25 million.
- 7.6.16. In respect to change (i) and (ii) above, the Applicant stated [REP6-010] that it cannot accept such restrictions on its ability to exercise its powers in the absence of a voluntary agreement, which might otherwise prevent the Applicant from building out the development. This, the Applicant stated, is consistent with standard practice. However, the Secretary of State will be aware that such a provision was included in the Sheringham and Dudgeon Orde, and the ExA sees no obvious reason not to recommend the change in this Order. The ExA considers that the Order should make provisions to ensure Network Rail can ensure the adequate protection of its assets and carry out its role and functions.
- 7.6.17. On point (iii), the Applicant considers [REP6-010] that only direct costs should be recoverable, as lost revenues of train operators is too wide and remote a category of loss for it to be responsible for. However, this view is not shared by Network Rail who feel they are entitled to recover losses under common law, nor the Secretary of

State previously where the change sought by Network Rail was included in the Sheringham and Dudgeon Order.

- 7.6.18. While the ExA accepts the Applicant needs to protect its position to ensure it can deliver the Proposed Development, the Applicant does not explain sufficiently why the said changes would be unreasonable, or why the circumstances in this case differ markedly from Sheringham and Dudgeon, and that such changes previously accepted by the Secretary of State as necessary to protect Network Rail should not be applied to this Order.
- 7.6.19. The ExA thus concurs with Network Rail, and the above changes are considered necessary in the interests of consistency to protect the apparatus and operation of the railway and are set out in the Recommended DCO.

National Grid

- 7.6.20. National Grid raises concerns over the current wording of Schedule 10 Part 3 and Part 1 of the Protected Provisions as it also seeks to protect its assets and its statutory functions from the Proposed Development. Matters concerning the need for the Applicant to CA Plots 34/25, 34/26, 34/27 and 34/28 are discussed in Section 6 of this Recommendation. In its Deadline 6 submission [REP6-283], National Grid has requested the following changes to Part 1 and Part 3 of the final draft DCO [REP6-007] which it says are necessary:
- i. Significant additional wording to Part 1, Paragraph 4 in respect to no acquisition of land without agreement.
 - ii. Additional wording to the interpretation of “acceptable insurance” in Part 3, Paragraph 2.
 - iii. Insertion of “acceptable security” and “deed of consent” interpretations to Part 3, Paragraph 2.
 - iv. Insertion of new Paragraph, under Part 3, Paragraph 4 (new Paragraph 5) on the acquisition of land by agreement only.
 - v. Insertion of new Paragraph 10(2) in respect to indemnity.
 - vi. Insertion of additional wording to Paragraph 10(7) regarding acceptable security provisions.
 - vii. Deletion of Paragraph 10(9) restricting amounts to no greater than £25 million.
- 7.6.21. In respect to change (iv), the Applicant stated [REP6-010] that it cannot accept such restrictions on its ability to exercise its powers in the absence of a voluntary agreement, which might otherwise prevent the Applicant from building out the development. This, the Applicant stated, is consistent with standard practice. However, the Secretary of State will be aware that such a provision was included in the Sheringham and Dudgeon Order and thus has previously been accepted as necessary.
- 7.6.22. The ExA concurs and considers that the Order should make provisions to ensure National Grid can protect its assets and carry out its role and functions. By accepting this change, the ExA considers that there would be no need for change (i) as they largely cover the same point. Change (v) was also accepted by the Secretary of State in the Sheringham and Dudgeon Order and in the interests of consistency the ExA sees no obvious reason for not recommending the change.

- 7.6.23. In respect to change (vii), the Applicant considers [REP6-010] that this is a reasonable figure based on the risk profile of the Proposed Development on the National Grid apparatus. It also states that it is not appropriate for it to indemnify National Grid where it is carrying out the works itself since National Grid will be in control of those works. National Grid's position is that, amongst other things, any losses it suffers would not have occurred but for the Proposed Development and accordingly, it should be protected, and that the drafting is clear that the Applicant would not be liable if National Grid are at fault. Again, this has been accepted by the Secretary of State in the Sheringham and Dudgeon Order where such a financial limit was not included in that Order, and the Applicant does not justify, with any compelling reasons, why the ExA or the Secretary of State should take a different position here.
- 7.6.24. In respect to changes (vi), (ii) and (iii), these were not included in the Sheringham and Dudgeon Order. The Applicant considers [REP6-010] that its own insurance would be provided during the construction and has included wording in the final draft DCO [REP6-007] to that effect. National Grid considers that the security and insurance provisions are required to back up the indemnity provided as both are required to prevent a situation arising where losses are not recoverable under the insurance policy. Here, the ExA agrees with the Applicant and finds that the additional requirements sought by National Grid represent "overkill"; in effect an insurance to protect against the insurance.
- 7.6.25. In summary, the ExA considers that the insertion of recommended changes (iv) and (v) and the deletion of paragraph 9(8) are justified, as the Secretary of State has previously accepted in the Sheringham and Dudgeon Order. Change (i) is obsolete as a result of change (iv). Changes (ii), (iii) and (vii) are unnecessary and not advanced in the Recommended DCO.

Aquind

- 7.6.26. Aquind Limited have made several representations [AS-013, AS-015, AS-019, REP1-071, REP3-094, REP4-100 and REP6-321] throughout the Examination. At the time of writing, the Aquind Interconnector Project is awaiting its own decision from the Secretary of State as to whether to make the Order, following the decision of the High Court to quash the (previous) Secretary of State's decision to withhold consent.
- 7.6.27. The Aquind Interconnector would, if consented, be within proximity to the Proposed Development's Order limits offshore, and Aquind has sought throughout the Examination the insertion of Protective Provisions within the Proposed Development Order. At Deadline 6 [REP6-321], Rampion reported that the key outstanding matters between itself and the Applicant concerned the separation distance for Offshore WTG and Offshore Substations; safety zones for the Rampion 2 proposals; and the disposal of materials in the marine area, where Aquind requested that materials would not be disposed of within 500m of the Aquind Order limits.
- 7.6.28. In its Deadline 5 response [REP5-122], the Applicant stated that it made a further proposal to Aquind on separation distances in an attempt to reach agreement, but that it did not accept that Aquind's position reflected a reasonable or proportionate position given the bespoke scenario in question in which the proposed Aquind development would bisect the Proposed Development Order limits. Aquind stated [REP6-321] that a list of new separation requirements and restrictions were sent to

the Applicant just before the close of the Examination. The Applicant responded stating that it requires time to properly consider the most recent proposal from Aquind and will respond to Aquind as soon as it is in a position to do so.

7.6.29. The Applicant stated [REP6-233] that it continues to engage with Aquind regarding the terms of a Cooperation Agreement to regulate the interface in delivery and operation of the respective projects. The Applicant stated that it continues to engage to settle the Agreement and therefore avoid the requirement for Protective Provisions. Both Aquind [REP6-321] and the Applicant [REP6-233] confirmed that conversations remain ongoing at the close of the Examination.

7.6.30. As the Secretary of State is still to issue their decision on whether to make or withhold the Aquind Interconnector Order, the ExA cannot take this any further forward, and cannot recommend provision be made for Protective Provisions for a scheme which does not have consent. Therefore, the ExA does not recommend this Order makes Protective Provisions for Aquind.

7.7. ExA's RECOMMENDED CHANGES

7.7.1. Table L below sets out the complete list of proposed changes to the final draft DCO [REP6-007] which are included within the Recommended DCO at Appendix C of this Recommendation. As stated above, many of the changes below include wording which has been advanced by the Applicant or SUs. In some cases, the ExA has made very minor changes to the suggested wording primarily for consistency reasons. In each case, the ExA is satisfied that our very minor amendments would not alter the intended meaning, but rather more accurately reflect the intended meaning.

Table L - ExA's Recommended Changes to the Final Draft DCO [REP6-007]

No	Article/Schedule	Wording in final draft DCO [REP6-007]	ExA Recommended Change
1	Schedule 1, Part 3, Requirement 8 <u>Site-specific plan for the detailed design approval of the onshore substation at Oakendene</u>	8.—(1) Works comprising Work No. 16 (excluding any onshore site preparation works) must not commence until details of— (a) siting and layout; (b) scale and quantum of development and its uses; (c) existing and proposed finished ground levels; (d) landscaping; (e) access; and (f) external appearance, form and materials for any buildings structures and other infrastructure including boundary treatment, for the onshore substation have been submitted to and approved in writing by the relevant planning authority following consultation with the West Sussex Fire and Rescue Service and Work No. 16 must be carried out in	~~8.—(1) Works comprising Work No. 16 (excluding any onshore site preparation works) must not commence until details of~~ <u>No stage which includes works comprising any part of Work No. 16 and Work No. 18, together with the parts of Work No 17 associated with those works, accesses A61 and A64 as shown on sheet 33 of the access rights of way and streets plans at Kent Street, or establishment and use of either of the compounds comprising Work No.10 shown on sheet 33 of the onshore works plans (excluding any onshore site preparation works) must commence until, only insofar as such works are included within or relate to works within that stage-</u>

No	Article/Schedule	Wording in final draft DCO [REP6-007]	ExA Recommended Change
		accordance with the approved details. (2) Any details provided by the undertaker pursuant to sub-paragraph (1) must accord with the principles set out in the relevant part of the design and access statement including taking account of climate change allowances, relationship to and effect on heritage assets, must accord with the drainage arrangements approved pursuant to requirement 17, include details of any water harvesting and recycling measures and be within the Order limits. (3) The details submitted pursuant to sub-paragraph (2) must demonstrate how the operation of Work No. 16 will secure water neutrality. (4) To the extent comprised in Work No. 16— 57 (a) there must be no more than 12 buildings; (b) the height of the main operational building and other infrastructure must be no more than 28.75 metres above ordnance datum; (c) the maximum main building length must be no more than 70 metres; (d) the maximum main building width must be no more than 20 metres; (e) lightning protection masts must be no more than a height of 34.25 metres above ordnance datum; and (f) the maximum height of any fire walls must be no more than 26.25 metres above ordnance datum. (5) For the purposes of paragraph (3) the term 'water neutrality' means that the use of water in the supply area before the development of Work No. 16 is the same or lower after	<u>(a) the following details of the substation (Work No. 16):</u> (a) siting and layout; (b) scale and quantum of development and its uses; (c) existing and proposed finished ground levels; (d) landscaping; (e) access (Work No. 18); and (f) external appearance, form and materials for any buildings structures and other infrastructure including boundary treatment, for the onshore substation have been submitted to and approved in writing by the relevant planning authority following consultation with the West Sussex Fire and Rescue Service and Work No. 16 must be carried out in accordance with the approved details. <u>(b) a single comprehensive construction traffic management and access plan covering: (i) the programming and routing of construction traffic along the A272 and into and out of the compounds comprising Work No. 10 shown on sheet 33 of the onshore works plans and Kent Street; (ii) the safety of construction accesses off the A272 and Kent Street; (iii) the safety of non-construction traffic, pedestrians, cyclists and equestrians using Kent Street; (iv) the restriction of HGV traffic from unsuitable routes off the A272; (v) measures to minimise the volume of construction traffic passing through the Air Quality Management Area at Cowfold; (vi) traffic management measures in respect of any previous stage approved under this requirement; and</u> <u>(c) details of vegetation removal, retention and replanting within Work Nos. 16 and 18 and along Kent Street at construction accesses A61 and A64 as shown on sheet 33 of the access rights of way and</u>

No	Article/Schedule	Wording in final draft DCO [REP6-007]	ExA Recommended Change
		<i>the development is in place in order to meet the requirements of regulation 63 of the Conservation of Habitats and Species Regulations 2017.</i> <i>(6) For the purposes of paragraph (4) the term 'building' excludes electrical infrastructure installations.</i>	<u>streets plans, which shall be consistent with the Outline Vegetation Retention and Removal Plan and the Outline Landscape and Ecology Management Plan for the onshore substation</u> <i>have been submitted to and approved in writing by the relevant planning authority following consultation with <u>the highway authority and</u> West Sussex Fire and Rescue Service and ~~Work No. 16~~ <u>works covered by the details submitted under this sub-paragraph (1)</u> must be carried out in accordance with the approved details.</i> <u>(2) Where details are approved pursuant to sub-paragraph (1) then details for:</u> <u>(a) construction traffic management;</u> <u>(b) accesses A61 and A64 as shown on sheet 33 of the access rights of way and streets plans; and</u> <u>(c) vegetation removal, retention and replanting for the part of a stage for which approval has been secured under requirement 8(1) shall not be required to be approved under requirements 24, 15, 12 or 13 as applicable.</u> ... ~~(3)(4)~~ <i>The details submitted pursuant to sub-paragraph (2) <u>(3)</u> must demonstrate how the operation of Work No. 16 will secure water neutrality.</i>
2	Schedule 1, Part 3, Requirement 9 <i>Detailed design approval-extension to National Grid substation</i>	<i>(1)... of the extension to the National Grid substation at Bolney have been submitted to and approved in writing by the relevant planning authority and Work No. 20 must be carried out in accordance with the approved details.</i>	<i>(1)... of the extension to the National Grid substation at Bolney have been submitted to and approved in writing by the relevant planning authority <u>in consultation with the highway authority</u> and Work No. 20 must be carried out in accordance with the approved details.</i>

No	Article/Schedule	Wording in final draft DCO [REP6-007]	ExA Recommended Change
3	Schedule 1, Part 3, Requirement 12(1) <i>Provision of landscaping</i>	<i>(1) submitted to and approved by the relevant planning authority following consultation with the statutory nature conservation body and Historic England (where relevant).</i>	<i>(1).... submitted to and approved by the relevant planning authority following consultation with the statutory nature conservation body ~~and~~ Historic England (where relevant) <u>and the Forestry Commission (where relevant).</u></i>
4	Schedule 1, Part 3, Requirement 14(1(b)) <i>Biodiversity Net Gain</i>	<i>(b) at least 70% of the total number of biodiversity units as required for that stage of the development have been secured and where appropriate proof of purchase provided in accordance with the approved biodiversity net gain strategy and to the satisfaction of the relevant planning authority.</i>	<i>(b) at least 70% of the total number of biodiversity units as required for that stage of the development have been secured and where appropriate proof of purchase provided in accordance with the approved biodiversity net gain strategy and to the satisfaction of the relevant planning authority <u>in consultation with the statutory nature conservation body.</u></i>
5	Schedule 1, Part 3, Requirement 29(5) <i>Control of noise during operational phase</i>	None	<u>(5) Work No. 20 must not commence, excluding onshore site preparation works, until a plan has been submitted to the relevant planning authority which provides details of the equipment to be installed at the substation extension comprising Work No. 20 including:</u> <u>(a) it's operational equipment that has the potential to generate noise emissions; and</u> <u>(b) characterisation of any sound and the expected frequency and duration of any such emissions to demonstrate that such emissions will not have a discernible or measurable effect in the context of the existing noise environment at the National Grid substation at Bolney.</u>
6	Schedule 1, Part 3, Requirement 39(3)(b) <i>Instrument flight procedures</i>	<i>(b) in the event that written notification under paragraph 2(b) is received, the Secretary of State has confirmed in</i>	<i>(b) in the event that written notification under paragraph 2(b) is received, the Secretary of State has confirmed in writing</i>

No	Article/Schedule	Wording in final draft DCO [REP6-007]	ExA Recommended Change
		<i>writing that they are satisfied that the undertaker has put in place a binding undertaking to pay the Airport Operator such sums as are demonstrably and reasonably required by the Airport Operator for producing and securing the implementation of the IFP Scheme.</i>	<i>that they are satisfied that the undertaker has put in place a binding undertaking to ~~pay~~ <u>adequately compensate</u> the Airport Operator ~~such sums as are demonstrably and reasonably required by the~~ Airport Operator for producing and securing the implementation of the IFP Scheme.</i>
7	Schedule 1, Part 3 NEW Requirement 45 <i>Site-specific plan for the detailed design of the temporary construction compounds at Washington and Climping</i>	None	<u>45 - (1) Works to provide the temporary construction compounds comprising Work No. 10 must not commence until details of—</u> <u>(a) siting and layout;</u> <u>(b) scale and quantum of uses to be undertaken;</u> <u>(c) existing and proposed ground levels throughout the use of the compound;</u> <u>(d) access; and</u> <u>(e) infrastructure including boundary treatment; for the temporary construction compounds</u> <u>have been submitted to and approved by the relevant planning authority following consultation with West Sussex County Council.</u> <u>(2) Where details are approved pursuant to this Requirement 45 then details for access and egress points and visibility splays for the temporary construction compounds will not be required to be approved pursuant to requirements 24 or 15.</u> <u>(3) The temporary construction compounds must be provided in accordance with the approved details.</u>
8a	Schedule 1, Part 3 NEW Requirement 46 <i>Crossing Schedule</i>	None	<u>46.- ‘(1) No stage of the authorised development shall commence until a trenchless crossing plan showing the final location and extent of each trenchless crossing in</u>

No	Article/Schedule	Wording in final draft DCO [REP6-007]	ExA Recommended Change
			<u>that stage and its compound has been submitted to and approved by the relevant planning authority.</u> <u>(2) The trenchless crossings in the relevant stages shall be undertaken in accordance with the details approved pursuant to sub-paragraph (1).</u>
8b	Schedule 1, Part 3 Requirement 22(4)(p) <i>Code of construction practice</i>	(n) hours of construction working; (o) water quality monitoring programme; and (p) a crossing schedule	(n) hours of construction working; <u>and</u> (o) water quality monitoring programme; <u>and</u> ~~(p) a crossing schedule~~
9	Schedule 10, Part 3 <i>Protection of National Grid Electricity Transmission PLC as Electricity Undertaker</i>	As per final draft DCO [REP6-007]	Amended as per National Grid's Deadline 6 response [REP6-283] except where discussed in Section 7.7 above.
10	Schedule 10, Part 5 <i>Protection of Railway Interests</i>	As per final draft DCO [REP6-007]	Amended as per Network Rail's Deadline 6 response [REP6-316] except where discussed in Section 7.7 above.
11	Schedule 10, Part 7 <i>Protection of National Highways Ltd</i>	As per final draft DCO [REP6-007]	Amended as per National Highway's Deadline 6 response [REP6-285] except where discussed in Section 7.7 above.
12	Schedules 11 and 12, Part 1, Paragraph 9 Part 2, Condition 3(5)	"...unlikely to give rise to any material new or materially different environmental effects..."	"...unlikely to give rise to any ~~material new or materially different~~ <u>materially worse</u> environmental effects..."
13	Schedules 11 and 12, Part 2 Condition 9(1)	(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).	(1) Unless otherwise agreed in writing by the MMO all ~~chemicals used in the construction of the authorised scheme must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended)~~ <u>and substances, including paints and coatings, used below MHWS for the undertaking of the licensed activities must be approved in writing by the</u>

No	Article/Schedule	Wording in final draft DCO [REP6-007]	ExA Recommended Change
			<u>MMO prior to use.</u> <u>Submission for approval to the MMO must take place no later than ten weeks prior to use, unless otherwise agreed by the MMO in writing.</u>
14	Schedules 11 and 12, Part 2 Condition 11(1)(l)	<i>(l) in the event that driven or part-driven pile foundations are proposed to be used, a piling marine mammal mitigation protocol which accords with the draft piling marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, including details of soft start procedures with specified duration periods following current best practice as advised by the relevant statutory nature conservation bodies;</i>	<i>(l) in the event that driven or part-driven pile foundations are proposed to be used:</i> <u>(i) the hammer energy used to drive or part-drive the pile foundations must not exceed— (a) 4,400kJ in respect of monopile foundations; and (b) 2,500kJ in respect of pin piles;</u> <i>(ii) a piling marine mammal mitigation protocol which accords with the draft piling marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, including details of soft start procedures with specified duration periods following current best practice as advised by the relevant statutory nature conservation bodies;</i>
15	Schedules 11 and 12, Part 2 Condition 18(5)	None	INSERT <u>(5) In the event that the reports provided to the MMO under sub-paragraph (3) identify impacts which are unanticipated and or beyond those predicted within the Environmental Statement and the Habitats Regulations Assessment an adaptive management plan to reduce effects to within what was predicted within the Environmental Statement and the Habitats Regulations Assessment, unless otherwise agreed by the MMO in writing, must be submitted alongside the monitoring reports submitted under sub-paragraph (3). This plan must be agreed by the MMO in consultation with the relevant statutory nature conservation bodies to reduce effects to an agreed suitable level for this project. Any such agreed and</u>

No	Article/Schedule	Wording in final draft DCO [REP6-007]	ExA Recommended Change
			<u>approved adaptive management or mitigation should be implemented and monitored in full to a timetable first agreed in writing with the MMO. In the event that this adaptive management or mitigation requires a separate consent, the undertaker shall apply for such consent. Where a separate consent is required to undertake the agreed adaptive management or mitigation, the undertaker shall only be required to undertake the adaptive management or mitigation once the consent is granted.</u>
16	Schedules 11 and 12, Part 2, NEW Condition 26 <i>Piling restriction</i>	None	<u>(26) - There shall be no piling associated with the authorised development between the dates of 01 March to 31 July inclusive, unless otherwise agreed to by the MMO and the statutory nature conservation body.</u>
17	NEW Schedule 17 <i>Compensation to Protect the Coherence of the National Site Network</i> NEW Article 59 NEW Schedule 17 listed in Schedules list	None	INSERT Schedule 17 (submitted by the Applicant on a without prejudice basis) as per [REP6-111] INSERT NEW ARTICLE 59 <u>59. Schedule 17 (Compensation to protect the coherence of the National Site Network) has effect.</u>
18	Schedule 16 <i>Certified Documents</i>	<i>As per final Draft DCO [REP6-007].</i>	Updated to insert EL references to those documents submitted at Deadline 6, and to add two documents in respect to the insertion of Schedule 17.

7.7.2. All suggested changes listed above have been explained within the Section and need no further discussion here, with the exception of the following.

7.7.3. In respect to the DML and Schedules 11 and 12 of the Recommended DCO, the ExA is proposing re-wording of Condition 9(1) in respect to the use of chemicals, and additional wording to Condition 18 (as Condition 18(5)) for adaptive management for fish and shellfish. Both are explained further in Section 3 of this Recommendation under Fish and Shellfish and Coastal Processes and Benthic Ecology.

- 7.7.4. The Secretary of State will be aware from the reading of Section 3 of this Recommendation that the ExA is also recommending a piling condition, restricting piling within the months of March to July, is inserted into the DML as Condition 26 of Part 2 to Schedules 11 and 12.
- 7.7.5. In Article 37 of the Recommended DCO and in reference to amendments to approved details, it states that *“the subject matter of the agreement sought is unlikely to give rise to **any materially worse environmental effects** (our emphasis) from those assessed in the environmental statement”*. The ExA notes that similar controls for the DML in Part 1 Paragraph 9 (amendments) and Part 2 Condition 3(5) (maintenance) contain a different test, in that any submission *“is unlikely to give rise to **any material new or materially different environmental effects** from those assessed in the environmental statement”*. The ExA considers the wording in Article 37 should prevail as the key test with any proposed change is whether it is worse in environmental terms. For consistency, the ExA has amended the DML and given that this represents a minor change, the Secretary of State need not reconsult the Applicant.
- 7.7.6. As explained in Section 3 of this Recommendation, the ExA has included the Forestry Commission in Requirement 12 at its request. The ExA has also for reasons given in Section 3 amended the wording of Requirement 39. As these changes are considered to be very minor, the ExA does not consider that the Secretary of State need seek the views of the Applicant.
- 7.7.7. As the Secretary of State will be aware also from Section 4 of this Recommendation, the ExA has found that Adverse Effects on Integrity to the FFC SPA on kittiwake, guillemot and razorbill cannot be ruled out or excluded. Accordingly, the ExA has incorporated Schedule 17 [REP6-111] in the Recommended DCO, with an amendment to the number of ANS from 5 to 10. The Secretary of State may, on this matter, wish to seek further information from the Applicant and NE on whether the wording of Schedule 17 is agreed (as NE had not agreed the wording at the close of the Examination) including the ExA’s suggested increase in the AMS figure from 5, as set out in the final draft DCO [REP6-007] to 10 in the Recommended DCO.
- 7.7.8. The Secretary of State will further be aware that NE remains concerned with the wording of this Schedule and has advanced at Deadline 6 [REP6-287] comments on changes and its own wording. While the ExA is content with the wording advanced by the Applicant (discussed in further detail in Section 3 of this Recommendation), it is possible the Applicant and NE are now in a position where the wording, and the ANS quanta is agreed.
- 7.7.9. There are some minor amendments to the Order in Schedule 16 (Certified Documents) to insert the EL references for Deadline 6.

7.8. KEY OUTSTANDING MATTERS

- 7.8.1. The ExA wishes to draw the Secretary of State’s attention to the following notable changes to the final draft DCO [REP6-007] which are being sought by IPs but which are not being recommended by the ExA.

Table M - Additional Changes sought by IPs not being recommended by the ExA

Article/Schedule	Change Sought	ExA Reason
Articles 11(7), 12(3), 15(5), 17(9) and 19(7)	To replace “28 days” with “42 days” in respect to the decision period.	All relevant authorities in their LIRs [REP1-039, REP1-041, REP1-044, REP1-046, REP1-049, REP1-054] sought this amendment to alleviate pressure on them when dealing with the matters at hand. The ExA considers 28 days to be a reasonable time-period for the Order to ensure the Applicant is not unduly delayed from implementing the Proposed Development. Similar time periods on similar Articles have been set out in other Orders most notably Sheringham and Dudgeon, and the ExA does not consider sufficient justification has been made to allow for a longer period.
Article 16(2)	Replace “4 weeks” with “8 weeks”	West Sussex CC [REP6-280] recommends that the Order be amended in the manner specified to ensure timely notice is provided. The ExA considers 4 weeks to be sufficient time.
Schedule 1, Part 3, Requirement 9	Include AOD as per Requirement 8	West Sussex CC [REP6-280] recommended that the measurements contained within Requirement 8, which included AOD measurements, should also be included in Requirement 9. But, as Requirement 8 refers to the new onshore substation rather than an extant National Grid substation, the ExA does not consider this to be required or necessary.
Schedule 14	Additional wording “Where an application is made to the relevant planning authority, a highway authority, LLFA for any consent, agreement or approval required under any of the provisions of this Order such application shall, where appropriate, identify and demonstrate compliance with the relevant commitments as set out in Commitment Register”.	Requested by West Sussex CC in its Deadline 6 submission [REP6-280] to provide greater certainty. However, West Sussex CC has not adequately clarified why it considers the current drafting is lacking, and the ExA considers the current wording to be sound and provides the appropriate certainty.

7.8.3.

While NE’s Risk and Issues Log [REP6-296] continues to identify other issues concerning the final draft DCO [REP6-007], the ExA has primarily focused on those specifically identified by NE in its submission entitled “*Natural England’s advice on the Development Consent Order*” [REP6-287]. The ExA considers that of those other issues identified as unresolved, they are either primarily discussed and addressed in Section 3 of this Recommendation particularly concerning the robustness of individual control documents or are matters discussed elsewhere in

this section. The ExA therefore has no further comments or recommendations on them.

- 7.8.4. West Sussex CC has identified in its Closing Statement submitted at Deadline 6 [REP6-280] inconsistencies between Schedule 13 and the Outline Vegetation Retention and Removal Plan [REP6-269], which is secured by Requirement 40 of the Recommended DCO. While no specific changes are sought to the Outline Vegetation Retention and Removal Plan, Requirement 40 of the Recommended DCO would secure a detailed plan and as such, the ExA considers that these concerns could be addressed at this point by the relevant planning authority.

7.9. CONCLUSION

- 7.9.1. The ExA has considered all iterations of the draft DCO as provided by the Applicant, from the submission version [APP-019] to the final version [REP6-007] and has considered the degree to which the Applicant's final version has addressed outstanding matters. A number of matters are the subject of recommendations in this Section and are included in the Recommended DCO in Appendix C of this Recommendation.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

- 8.1.1. This is an application where a National Policy Statement has effect and accordingly falls to be determined under s104 PA2008. As required by s104(2), in making this Recommendation, the ExA has had full regard to the relevant NPS. For this case, NPS EN-1, EN-3 and EN-5 2011 are the relevant overarching national policy statements.
- 8.1.2. The ExA has also had regard to the MCAA2009 and to all matters arising, together with identified relevant planning policies, in the LIRs from Arun DC, Horsham DC, Mid Sussex DC, SDNPA, Brighton & Hove CC and West Sussex CC. The ExA notes that all relevant authorities identified in their respective LIRs generally support the Proposed Development, with outstanding concerns by the close of the Examination addressed in Section 3 of this Recommendation.

8.2. CONSIDERATION OF FINDINGS

- 8.2.1. The ExA concludes that making the Recommended DCO would be in accordance with NPS EN-1, NPS EN-3, and NPS EN-5 2011, the Marine Policy Statement and the South Inshore and Offshore Marine Plans. With regard to all other matters and representations received in the Examination, there are no important and relevant matters that would individually or collectively lead to a different recommendation to that below.
- 8.2.2. The ExA concludes that the weight to be attached to the compelling need for the Proposed Development, as set out in NPS EN-1, EN-3 and EN-5 2011, outweighs the negative effects caused as identified in Section 3 and summarised in Section 5 of this Recommendation. In so doing, the ExA is satisfied that the paragraph 208 test in the Framework with respect heritage assets and the public benefits test; and the LURA2023 test to seek to further the purposes of national landscapes, and accordingly the SDNP, have been discharged.
- 8.2.3. While not the governing NPSs for this Proposed Development, the ExA considers that NPS EN-1, EN-3 and EN-5 2024 can be considered as important and relevant to the determination of this proposal, which identifies offshore wind farms as CNP. Accordingly, the ExA considers that the Proposed Development would have no adverse effects that would outweigh its benefits and as such s104(7) of the PA2008 does not apply.
- 8.2.4. The Secretary of State is the Competent Authority under the Habitats Regulations and will need to determine whether an AA is required. The ExA advises that AEoI to the FFC SPA cannot be ruled out. While the Applicant disagrees, it has from the outset of the application produced a derogation case on a without prejudice basis, which includes the need to insert Schedule 17 into the Recommended DCO. NE has agreed in principle with the derogation case but not the wording of Schedule 17 of the Recommended DCO particularly regarding the quantum of compensation for kittiwake. Subject to the insertion of Schedule 17, the ExA considers that the Proposed Development would not adversely affect European sites, species or habitats, and that s104(4), s104(5) and s104(6) of the PA2008 would not apply.

- 8.2.5. As assessed in Section 3 and summarised in Section 5 of this Recommendation, the ExA concludes that the Proposed Development accords with the policies in the designated NPS EN-1, EN-3 and where relevant EN-5 2011.
- 8.2.6. Under the Transitional Arrangements, policy compliance with NPS EN-1 and EN-3 2024 is not required. The ExA has nevertheless identified that in a few topic areas, the Proposed Development would not fully meet those requirements. However, the ExA considers that the broad thrust of policies in NPS EN-1 and EN-3 2024 are not dissimilar to those to NPS EN-3 2011, rather than they require new applications to go further than required in NPS EN-1 and EN-3 2011. Therefore, there is nothing in NPS EN-1 and EN-3 2024 which would render the current scheme to be considered unacceptable in ornithological matters when taking into account the regard to be had to it during the Transitional Arrangements.
- 8.2.7. Consequently, there is nothing to indicate that the application should be decided other than in accordance with the NPSs 2011, and s104(3) is therefore satisfied.
- 8.2.8. In relation to the application for CA and TP powers within the Recommended DCO, the ExA concludes that the Proposed Development for which the land and rights are sought would be in accordance with the tests in s122, 127, 131 and 132 of the PA2008.
- 8.2.9. The ExA accepts that the need to secure the land and rights required, and to construct the Proposed Development within a reasonable commercial timeframe, represent a significant public benefit. The Applicant has explored all reasonable alternatives to the CA of land, rights and interests sought and there are no alternatives that ought to be preferred. The ExA is satisfied that adequate and secure funding would be available to enable CA within the statutory period following the Order being made. The Secretary of State will note that there are outstanding matters relating to Crown Land and National Trust.
- 8.2.10. The proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree. Thus, there would be no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.'
- 8.2.11. The ExA has had due regard to the three aims of the PSED and of particular relevance to the Examination was the second aim of advancing equality of opportunity. The ExA also sets out how we promoted their opportunity of involvement in the Examination. Additionally, in Section 6 of this Recommendation, the ExA sets out that we are satisfied that both the Applicant and the ExA has had due regard for its PSED duty in respect to the CA and TP considerations relating to the Proposed Development. Thus, there would be no conflict with s149 of the EA2010 sets out the PSED to protect both individual and groups or communities.
- 8.2.12. The ExA concludes that the Order be made subject to the changes as prescribed in the Recommended DCO, which would overcome any final concerns with the Proposed Development.

8.3. CONCLUSION

- 8.3.1. Subject to matters set out in Appendix A of this Report, for all of the above reasons, and in the light of the ExA's findings and conclusions on important and relevant

matters set out in the Recommendations, the ExA recommends that the Secretary of State makes the Rampion 2 OWF DCO in the form recommended at Appendix C of this Recommendation.

8.4. MATTERS FOR THE SECRETARY OF STATE

8.4.1. As prescribed in Sections 3, 4, 6 and 7 in this Recommendation, the ExA considers the evidence before the Secretary of State at the close of the Examination is sufficient for them to determine the application.

8.4.2. However, written consent from the Crown authorities had not been received by the close of the Examination, and the Secretary of State may wish to seek written response from The Crown Estate, the Forestry Commission and the Secretary of State for Transport as to whether consent would be forthcoming prior to the determination of the Proposed Development

8.4.3. There are some further important areas set out below in which the Secretary of State may wish to seek further information as to whether respective positions have been updated or advanced since the close of the Examination, where such updated information may assist in the Secretary of State in making their decision. They are:

From the Applicant:

- The progression of HoTs in relation the CA of land by voluntary means and to submit an up-to-date LRT.
- Confirmation that the objection to the Proposed Development has been withdrawn by NT (in order to avoid the need for SPP).

From the Applicant and NE:

- Where there are any updates on the wording of Schedule 17 (should the Secretary of State be minded to insert it into the Recommended DCO). The Secretary of State may wish to seek the parties' views on increasing the compensation quanta from five to ten nesting sites for breeding kittiwake pairs at the existing ANS at Gateshead, (stated in Schedule 17 Part 1(5)(b) of the Recommended DCO) should the Secretary of State be minded to concur with the ExA's reasoning for its increase.
- The wording of Condition 26 (piling condition) of Schedule 11 and 12 of the DML which is contained within the Recommended DCO.

From the Applicant, NE and the MMO:

- The wording of Condition 18(5) (post-consent adaptive management) of Schedule 11 and 12 of the DML which is contained within the Recommended DCO.

APPENDICES

APPENDIX A: REFERENCE TABLES All

APPENDIX B: LIST OF ABBREVIATIONS BI

APPENDIX C: THE RECOMMENDED DCO..... CI

APPENDIX A: REFERENCE TABLES

Appendix A1 – The Environmental Statement

ES Chapter/Figs/Appendix	EL Reference
ES Non-Technical Summary	REP6-117
Chapter 1 Introduction	REP6-119
Figures	APP-073
Appendix	APP-120
Chapter 2 The Project	REP6-141
Figures	APP-074
Chapter 3 Assessment of Alternatives	REP6-163
Figures	APP-075, REP6-190
Appendix	APP-121
Chapter 4 Proposed Development	REP6-171
Figures	APP-076, APP-077
Appendices	APP-122, APP-123, REP6-210
Chapter 5 Approach to EIA	REP6-173
Figures	APP-078
Appendices	APP-125, APP-126, APP-127, APP-128
Chapter 6 Coastal Processes	REP6-175
Figures	APP-079
Appendices	APP-129, APP-130, REP5-044, REP5-045
Chapter 7 Other Marine Users	REP6-177
Figures	APP-080
Chapter 8 Fish and Shellfish	REP6-179
Figures	REP6-191
Appendices	APP-132, APP-133, REP2-011, PEPD-023
Chapter 9 Benthic, Subtidal & Intertidal	REP6-181
Figures	REP2-010

APPENDIX A: REFERENCE TABLES

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(A:II)

ES Chapter/Figs/Appendix	EL Reference
Appendices	APP-135, APP-136, APP-137, APP-138, APP-139, APP-140, APP-141, APP-142, APP-143, APP-144, APP-145
Chapter 10 Commercial Fisheries	REP6-121
Figures	APP-083
Appendices	APP-146
Chapter 11 Marine Mammals	REP6-123
Figure	APP-084
Appendices	APP-147, APP-148, REP5-046, REP6-192
Chapter 12 Offshore & Intertidal	REP6-125
Figures	APP-085
Appendices	APP-150, APP-151, APP-152, APP-153, APP-154, REP6-193
Chapter 13 Shipping & Navigation	REP6-127
Figures	APP-086
Appendices	APP-155
Chapter 14 Civil & Military Aviation	REP6-129
Figures	APP-087
Appendices	APP-156
Chapter 15 SLV	REP6-131
Figures	APP-088, APP-089, APP-090, APP-091, APP-092, APP-093, APP-094, APP-095
Appendices	APP-157, APP-158, APP-159, APP-160, APP-161, PEPD-024
Chapter 16 Marine Archaeology	REP6-133
Figures	APP-096
Appendices	REP3-017, REP3-018
Chapter 17 Socio-economics	REP6-135
Figures	APP-097
Appendices	APP-163, APP-164, APP-165, APP-166
Chapter 18 LV Onshore	REP6-137

APPENDIX A: REFERENCE TABLES

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(A:III)

ES Chapter/Figs/Appendix	EL Reference
Figures	REP6-184, REP6-185, REP6-183, REP6-186, REP6-187, REP6-188
Appendices	APP-167, REP4-033, REP6-196, REP6-198, REP6-200, REP6-202
Chapter 19 Air Quality	REP6-139
Figures	APP-104
Appendices	APP-173, APP-174
Chapter 20 Soils & Agriculture	REP6-141
Figures	APP-105
Appendices	APP-175
Chapter 21 Noise & Vibration	REP6-145
Figures	APP-106 and PEPD-022
Appendices	APP-176, PEPD-025, PEPD-026, APP-177, PEPD-027, PEPD-028 APP-178
Chapter 22 Terrestrial Ecology	REP6-147
Appendices	APP-179, APP-180, APP-181, APP-182, APP-183, APP-184, APP-185, APP-186, APP-187, APP-188, APP-189, APP-190, APP-191, APP-192, REP6-204, REP5-058, APP-194, APP-195, PEPD-029, PEPD-030
Chapter 23 Transport	REP6-149
Figures	APP-107, APP-108, APP-109, APP-110
Appendices	REP6-206, REP6-208
Chapter 24 Ground Conditions	REP6-151
Figures	APP-111
Appendices	APP-198
Chapter 25 Historic Environment	REP6-153
Figures	APP-112, APP-113, REP4-031, REP6-189, APP-116,
Appendices	APP-199, APP-200, APP-201, APP-202, PEPD-031, PEPD-113, APP-205, PEPD-114, PEPD-115, PEPD-116, PEPD-117, PEPD-118, PEPD-119 APP-211, APP-212, APP-213, APP-214
Chapter 26 Water Environment	REP6-155

APPENDIX A: REFERENCE TABLES

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(A:IV)

ES Chapter/Figs/Appendix	EL Reference
Figures	APP-117, APP-118
Appendices	APP-215, REP4-039 APP-217, APP-218
Chapter 27 Major Accidents	REP6-157
Chapter 28 Population & Health	REP6-159
Figures	APP-119
Appendices	APP-219, APP-220, APP-221
Chapter 29 Climate Change	REP6-161
Appendices	APP-222
Chapter 30 Inter-related Effects	REP6-165
Chapter 31 Summary	REP6-167
Chapter 32 ES Addendum	REP6-169
Land plans	PEPD-003
Works plans	PEPD-004 Offshore PEPD-005 Onshore

Appendix A2 – PADS

Interested Party	EL References
Marine Management Organisation	AS-005, REP6-301
SDNPA	AS-006, REP6-298
National Highways	AS-007
West Sussex CC	AS-008, REP6-281
Mid Sussex DC	AS-009
Horsham DC	AS-010
Natural England	AS-011, REP6-295
Arun DC	AS-012, REP6-276

APPENDIX A: REFERENCE TABLES

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(A:V)

Interested Party	EL References
National Highways	AS-050

Appendix A3 – Summary of Substantive RR from Members of the Public

RR No.	Issue
RR-025, RR-036, RR-038, RR-040, RR-065, RR-066, RR-067, RR-070, RR-072, RR-073, RR-076, RR-079, RR-086, RR-090, RR-096, RR-098, RR-101, RR-107, RR-109, RR-112, RR-113, RR-126, RR-130, RR-142, RR-152, RR-154, RR-161, RR-168, RR-170, RR-178, RR-184, RR-191, RR-204, RR-206, RR-210, RR-211, RR-212, RR-213, RR-218, RR-223, RR-224, RR-228, RR-231, RR-232, RR-235, RR-236, RR-240, RR-252, RR-253, RR-267, RR-272, RR-273, RR-274, RR-277, RR-278, RR-286, RR-292, RR-293, RR-298, RR-300, RR-307, RR-308, RR-313, RR-314, RR-316, RR-317, RR-318, RR-322, RR-325, RR-328, RR-333, RR-336, RR-346, RR-347, RR-370, RR-371, RR-373, RR-385, RR-394, RR-398, RR-402, RR-405, RR-409, RR-420	Proposed Onshore Substation at Oakendene: Traffic and Access: Disruption to the A272 at Cowfold caused by the construction of the proposed onshore substation at Oakendene.
RR-038, RR-017, RR-060, RR-064, RR-070, RR-096, RR-098, RR-101, RR-107, RR-109, RR-112, RR-113, RR-161, RR-164, RR-168, RR-178, RR-191, RR-252, RR-273, RR-281, RR-292, RR-297, RR-298, RR-308, RR-311, RR-313, RR-316, RR-317, RR-336, RR-347, RR-365, RR-366, RR-371, RR-402, RR-405, RR-420	Proposed Onshore Substation at Oakendene: Traffic and Access: Effect of the Proposed Development at Kent Street in connection with the proposed onshore substation at Oakendene
RR-017, RR-064, RR-072, RR-079, RR-098, RR-107, RR-109, RR-113, RR-128, RR-144, RR-152, RR-155, RR-158, RR-161, RR-168, RR-213, RR-231, RR-232, RR-236, RR-252, RR-272, RR-274, RR-277, RR-281, RR-293, RR-297, RR-313, RR-314, RR-316, RR-317, RR-334, RR-347, RR-398, RR-399	Proposed Onshore Substation at Oakendene: Design and siting of the onshore substation at Oakendene
RR-023, RR-038, RR-072, RR-299, RR-300, RR-313, RR-314, RR-347, RR-373	Traffic and Access: Disruption and effect at Dragons Lane by the construction of the proposed cable route.
RR-014, RR-017, RR-019, RR-020, RR-025, RR-030, RR-038, RR-040, RR-043, RR-046, RR-050, RR-051, RR-052, RR-061, RR-065, RR-070, RR-078, RR-086, RR-090, RR-096, RR-098, RR-101, RR-107, RR-111, RR-112, RR-113, RR-118, RR-130, RR-132, RR-132, RR-136, RR-144, RR-154, RR-155, RR-159, RR-161, RR-163, RR-164, RR-167, RR-168, RR-174, RR-186, RR-188, RR-191, RR-199, RR-200, RR-201, RR-204, RR-208, RR-	Ecology, wildlife and biodiversity

APPENDIX A: REFERENCE TABLES

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(A:VI)

RR No.	Issue
209, RR-210, RR-211, RR-214, RR-215, RR-216, RR-218, RR-220, RR-224, RR-231, RR-236, RR-240, RR-244, RR-246, RR-247, RR-252, RR-253, RR-259, RR-269, RR-272, RR-274, RR-276, RR-277, RR-280, RR-282, RR-284, RR-286, RR-292, RR-298, RR-300, RR-301, RR-302, RR-303, RR-310, RR-311, RR-323, RR-327, RR-329, RR-334, RR-337, RR-338, RR-340, RR-342, RR-343, RR-344, RR-347, RR-355, RR-364, RR-365, RR-366, RR-371, RR-374, RR-378, RR-379, RR-387, RR-394, RR-396, RR-399, RR-405, RR-408, RR-411, RR-412, RR-416, RR-417	
RR-006, RR-011, RR-017, RR-020, RR-024, RR-029, RR-035, RR-043, RR-049, RR-057, RR-061, RR-078, RR-080, RR-088, RR-092, RR-095, RR-110, RR-117, RR-128, RR-129, RR-136, RR-156, RR-159, RR-163, RR-167, RR-175, RR-176, RR-186, RR-200, RR-208, RR-230, RR-234, RR-242, RR-291, RR-310, RR-322, RR-326, RR-337, RR-338, RR-342, RR-343, RR-356, RR-372, RR-374, RR-375, RR-377, RR-408, RR-410, RR-417	Offshore effects on the seabed and on kelp
RR-019, RR-029, RR-035, RR-037, RR-043, RR-052, RR-053, RR-060, RR-070, RR-080, RR-095, RR-110, RR-111, RR-128, RR-129, RR-163, RR-176, RR-189, RR-225, RR-234, RR-239, RR-282, RR-303, RR-310, RR-313, RR-323, RR-337, RR-338, RR-346, RR-347, RR-349, RR-354, RR-361, RR-365, RR-366, RR-377, RR-379, RR-409	Offshore effects on migrating birds, nightingales and insects
RR-008, RR-026, RR-050, RR-061, RR-063, RR-080, RR-087, RR-096, RR-118, RR-130, RR-132, RR-154, RR-156, RR-167, RR-188, RR-199, RR-210, RR-217, RR-222, RR-234, RR-242, RR-268, RR-291, RR-298, RR-302, RR-313, RR-327, RR-334, RR-344, RR-354, RR-363, RR-382, RR-405, RR-423	Noise during the construction phase on human receptors and through the offshore piling works
RR-065, RR-066, RR-112, RR-161, RR-209, RR-235, RR-236, RR-239, RR-246, RR-247, RR-252, RR-286, RR-297, RR-298, RR-317, RR-322, RR-337, RR-338, RR-409	Onshore effects on trees and hedgerows
RR-094, RR-090, RR-132, RR-141, RR-168, RR-206, RR-306, RR-371, RR-387, RR-420	Flooding: - Climping Beach - the Cowfold Stream - general concerns
RR-001, RR-015, RR-027, RR-037, RR-049, RR-052, RR-057, RR-060, RR-058, RR-098, RR-101, RR-110, RR-109, RR-	Alternatives - to the offshore array

APPENDIX A: REFERENCE TABLES

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024
(A:VII)

RR No.	Issue
118, RR-126, RR-128, RR-132, RR-141, RR-144, RR-145, RR-158, RR-168, RR-170, RR-172, RR-198, RR-201, RR-215, RR-216, RR-231, RR-234, RR-239, RR-242, RR-259, RR-277, RR-284, RR-287, RR-291, RR-297, RR-303, RR-307, RR-310, RR-313, RR-314, RR-315, RR-322, RR-378, RR-387, RR-396, RR-398, RR-400, RR-402	- the landfall - the cable route - the location of the proposed substation
RR-013, RR-019, RR-020, RR-024, RR-029, RR-035, RR-043, RR-049, RR-062, RR-065, RR-080, RR-082, RR-087, RR-089, RR-091, RR-092, RR-110, RR-111, RR-118, RR-124, RR-136, RR-143, RR-151, RR-152, RR-153, RR-154, RR-156, RR-163, RR-172, RR-176, RR-179, RR-186, RR-187, RR-189, RR-200, RR-209, RR-222, RR-225, RR-234, RR-241, RR-242, RR-269, RR-279, RR-280, RR-292, RR-296, RR-309, RR-310, RR-315, RR-319, RR-320, RR-322, RR-323, RR-326, RR-334, RR-337, RR-343, RR-348, RR-351, RR-352, RR-353, RR-354, RR-355, RR-361, RR-364, RR-374, RR-386, RR-401, RR-408, RR-410	Location and efficiency of the offshore wind farm
RR-004, RR-006, RR-013, RR-019, RR-026, RR-029, RR-030, RR-037, RR-038, RR-046, RR-049, RR-051, RR-052, RR-056, RR-057, RR-063, RR-065, RR-066, RR-068, RR-080, RR-082, RR-088, RR-091, RR-092, RR-096, RR-099, RR-103, RR-106, RR-110, RR-118, RR-124, RR-128, RR-130, RR-136, RR-140, RR-144, RR-153, RR-154, RR-156, RR-171, RR-176, RR-179, RR-181, RR-183, RR-186, RR-188, RR-189, RR-198, RR-200, RR-209, RR-214, RR-217, RR-225, RR-230, RR-239, RR-240, RR-241, RR-243, RR-252, RR-269, RR-275, RR-282, RR-292, RR-296, RR-309, RR-316, RR-321, RR-322, RR-323, RR-324, RR-326, RR-334, RR-336, RR-337, RR-338, RR-340, RR-343, RR-344, RR-349, RR-351, RR-352, RR-353, RR-354, RR-361, RR-374, RR-377, RR-386, RR-394, RR-399, RR-401, RR-408, RR-409, RR-416, RR-420	Seascape, landscape and visual: General concerns of the Proposed Development on seascape, landscape and visual impacts
RR-004, RR-011, RR-019, RR-043, RR-051, RR-065, RR-068, RR-092, RR-106, RR-110, RR-118, RR-124, RR-140, RR-151, RR-172, RR-187, RR-205, RR-209, RR-218, RR-222, RR-223, RR-239, RR-234, RR-269, RR-277, RR-279, RR-282, RR-284, RR-312, RR-319, RR-326, RR-337, RR-341, RR-377, RR-386	Seascape, landscape and visual: Concern over the visual impact of the WTG on the seascape and on the landscape including lighting and long-distance views from the SDNP.
RR-019, RR-020, RR-043, RR-046, RR-051, RR-063, RR-118, RR-129, RR-136, RR-151, RR-209, RR-214, RR-242, RR-269, RR-279, RR-284, RR-310, RR-321, RR-322, RR-323, RR-326, RR-337, RR-	Tourism

APPENDIX A: REFERENCE TABLES

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(A:VIII)

RR No.	Issue
338, RR-351, RR-354, RR-374, RR-386, RR-408, RR-423	
RR-025 RR-038 RR-043 RR-052 RR-063 RR-065 RR-066 RR-079 RR-088 RR-132 RR-144 RR-152 RR-153 RR-154 RR-161 RR-177 RR-188 RR-199 RR-201 RR-204 RR-209 RR-214 RR-231 RR-236 RR-261 RR-274 RR-295 RR-310 RR-311 RR-315 RR-316 RR-319 RR-322 RR-324 RR-347 RR-362 RR-363 RR-364 RR-371 RR-377 RR-382 RR-387 RR-399 RR-400 RR-408 RR-409	Business and the local economy
RR-004, RR-008, RR-014, RR-044, RR-049, RR-064, RR-097, RR-109, RR-126, RR-150, RR-168, RR-194, RR-199, RR-201, RR-206, RR-224, RR-229, RR-245, RR-252, RR-270, RR-271, RR-281, RR-290, RR-301, RR-302, RR-315, RR-322, RR-323, RR-324, RR-365, RR-366, RR-367, RR-386	Effect on living conditions and to Brookside Holiday Camp
RR-004, RR-005, RR-015, RR-017, RR-021, RR-029, RR-036, RR-039, RR-046, RR-050, RR-054, RR-060, RR-064, RR-065, RR-066, RR-067, RR-070, RR-073, RR-086, RR-096, RR-100, RR-103, RR-108, RR-109, RR-112, RR-113, RR-118, RR-126, RR-132, RR-134, RR-137, RR-143, RR-144, RR-152, RR-154, RR-159, RR-160, RR-164, RR-166, RR-168, RR-194, RR-198, RR-199, RR-209, RR-210, RR-211, RR-215, RR-216, RR-223, RR-224, RR-231, RR-232, RR-235, RR-236, RR-240, RR-242, RR-246, RR-253, RR-259, RR-261, RR-268, RR-269, RR-272, RR-273, RR-276, RR-278, RR-292, RR-293, RR-300, RR-302, RR-306, RR-307, RR-308, RR-314, RR-325, RR-328, RR-334, RR-336, RR-357, RR-368, RR-371, RR-378, RR-382, RR-387, RR-394, RR-396, RR-398, RR-400, RR-402, RR-405, RR-409	Other general Onshore Environment concerns in respect to: - Traffic and access - Air quality - Noise and vibration - Landscaping - Historic environment - Terrestrial ecology - Socio-economics - Water environment - Human health - Soils and agriculture - Electromagnetic field - Waste and material resources

Appendix A4 – Summary of Relevant Legislation for the Proposed Development

Relevant Legislation
▪ Water Resources Act 1991 ▪ The Environment Act 1995 ▪ The Water Resources (Abstraction and Impounding) Regulations 2006 ▪ Environmental Permitting (England and Wales) Regulations 2016 ▪ Pollution Prevention and Control Act 1999 ▪ Land Drainage Act 1991 ▪ Water Industry Act 1991 ▪ Environmental Protection Act 1990 s79(1)(d) ▪ Part IV of the Environment Act 1995 ▪ Air Quality (England) Regulations 2000 ▪ Air Quality Standards Regulations 2010, as amended ▪ Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019

APPENDIX A: REFERENCE TABLES

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(A:IX)

Relevant Legislation

- Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020
- Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations 2017') as amended
- Wildlife and Countryside Act (WCA) 1981 (as amended)
- Natural Environment and Rural Communities (NERC) Act 2006
- Environment Act 2021
- Hedgerow Regulations 1997
- Protection of Badgers Act 1992 (as amended)
- Salmon and Freshwater Fisheries Act 1975 (as amended)
- Water Framework Directive (2000/60/EC) (as amended)
- Eels (England and Wales) Regulations 2009
- The Kyoto Protocol
- The Paris Agreement
- Climate Change Act 2008
- Climate Change Act 2008 (2050 Target Amendment) Order
- Carbon Budget Order 2009
- Carbon Budget Order 2011
- Carbon Budget Order 2016
- Carbon Budget Order 2021
- Climate Change Act 2008 (Credit Limit) Order 2021
- Ancient Monuments and Archaeological Areas Act 1979
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Wildlife and Countryside Act 1981 (as amended)
- National Parks and Access to the Countryside Act 1949 (as amended)
- Contaminated Land (England) (Amendment) Regulations 2012 ('Contaminated Land Regulations')
- Environmental Protection Act 1990 (as amended by the Environmental Act 1995 Part 2A)
- Water Resources Act 1991 (WRA 1991) (as amended)
- Town and Country Planning Act 1990 (as amended)
- Building Act 1984 and the Building Regulations 2010 (as amended)
- Water Act 2003 (as amended) Environmental Permitting (England and Wales) (Amendment) Regulations 2016/1154
- Highways Act 1980 Section 105A
- Water Framework Directive (2000/60/EC) (as amended)
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- European Landscape Convention (ELC) (Council of Europe, 2016)
- Waste Framework Directive (2000/60/EC (as amended)
- European Commission Circular Economy Package Environmental Protection Act 1990
- Hazardous Waste (England and Wales) Regulations 2005 (as amended)
- Waste (England and Wales) Regulations 2011 (as amended)
- Waste Electrical and Electronic Equipment ('WEEE') Regulations 2013
- Environmental Permitting Regulations 2016
- Environmental Noise (England) Regulations 2006 (as amended)
- Control of Pollution Act 1974 (as amended)
- Noise Insulation Regulations 1975
- Environmental Protection Act 1990 (as amended)
- Localism Act 2011
- The Commons Registration Act 1965
- The Countryside and Rights of Way Act 2000
- The National Parks and Access to the Countryside Act 2000
- The Health and Social Care Act 2012
- Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019
- Environment Act 2021
- Environment (Amendment etc.) (EU Exit) Regulations 2019
- Environmental Protection Act 1990
- Environment Act 1995
- Environmental Permitting (England and Wales) Regulations 2016
- Water Resources Act 1991
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFD)
- Land Drainage Act 1991
- Water Act 2014
- Water Resources (Abstraction and Impounding) Regulations 2006

APPENDIX A: REFERENCE TABLES

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(A:X)

Relevant Legislation

- Water Abstraction and Impounding (Exemptions) Regulations 2017
- Flood Risk Regulations 2009
- Water Supply (Water Quality) Regulations 2018
- Flood and Water Management Act 2010 Environmental Damage (Prevention and Remediation) (England) Regulations 2015
- Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015
- Groundwater (Water Framework Directive) (England) Direction 2016

Appendix A5 – Made DCOs

Other Made DCOs Identified by the Applicant

Hornsea Three Offshore Wind Farm Order 2020/1656
East Anglia One North Offshore Wind Farm Order 2022/432
East Anglia Two Offshore Wind Farm Order 2022/433
Hornsea Four Offshore Wind Farm Order 2023/800
Awel y Môr Offshore Wind Farm Order 2023/1033
Norfolk Vanguard Offshore Wind Farm Order 2022/138
Norfolk Boreas Offshore Wind Farm Order 2021/1414
Rampion Offshore Wind Farm Order 2014/1873
Kentish Flats Extension Order 2013/343
Walney Extension Offshore Wind Farm Order 2014/2950
Portishead Branch Line (MetroWest Phase 1) Order 2022/1194
A30 Chiverton to Carland Cross Development Consent Order 2020/121
Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014/2384
River Humber Gas Pipeline Replacement Order 2016/853
Lake Lothing (Lowestoft) Third Crossing Order 2020/474
London Underground (Northern Line Extension) Order 2014/3102 (made under the TWA 1992)
Midland Metro (Wolverhampton City Centre Extension) Order 2016/684 (made under the TWA 1992)
Northampton Gateway Rail Freight Interchange Order 2019/1358
West Midlands Rail Freight Interchange Order 2020/511
The Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.

Appendix A6 – Iterations of the Draft DCO and a Summary of Notable Changes

Deadline No.	EL Ref	Comment on Changes	ExA's Commentary on Notable Changes Made
Sub	APP-019	N/A	N/A

APPENDIX A: REFERENCE TABLES

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(A:XI)

Deadline No.	EL Ref	Comment on Changes	ExA's Commentary on Notable Changes Made
Pre-exam	PEPD-009	PEPD-011	- Minor changes to Article 2. - Amendments to Schedule 1, Part 1 Work No.16; and to Part 3 Requirements 2 to 8, 10. - Moderate changes to Schedules 11 and 12 (DML).
2	REP2-002	REP2-006	- Part 1, Article 2 insertion of additional interpretations. - Alterations to Article 12 and Schedules 4, 5 and 13 to include the SDNPA. - Various amendments to wording of Schedule 1, Part 1 the authorised development, and to Schedule 1, Part 3 most Requirements, and Schedules 11 and 12 (DML). Insertion of Protective Provisions: - Part 3 (protection of National Grid Electricity transmission as electricity undertaker). - Part 4 (protection of Southern Electric Power Distribution Networks PLC as electricity undertaker). - Part 5 (protection of Southern Gas Networks plc as gas undertaker). - Part 7 (protection of National Highways Ltd)
3	REP3-003	REP3-007	- Part 1, Article 2 insertion of additional interpretations. - Part 2, Article 5 major wording changes to Benefits of the Order following concerns of the MMO (see Section 7.4 of this Recommendation). - Insertion of new Part 3, Article 16 (speed limits), Schedule 1, Part 3 Requirement 34 (construction communications plan). - Alterations to Articles 8, 30, Schedule 1 Part 3 Requirements 8 and 22, Schedule 10, Part 1 (protective provision) Schedules 11 and 12 (DML). Considerable update and expansion of Schedule 16 (certified documents) including the addition of the Commitments Register.
4	REP4-004	REP4-008	- Part 1, Article 2 insertion of additional interpretations. - Part 2, Article 5 changes to Benefits of the Order (removal of wording) following concerns of the MMO and publication of the ExA's Draft Changes to the DCO (see below). 8.4.5. Insertion of new Schedule 1 Part 3, Requirement 38 (primary radar surveillance mitigation and Requirement 39 (instrument flight procedures) following the ExA's questions at ISH2 [REP4-072] and further discussions with the relevant IPs; and Requirement 40 (vegetation retention and removal plan (at the request of the ExA). - Alterations to Articles 33, 58, Schedule 1 Part 3 Requirements 23, 33 and 34 and Schedules 11 and 12 (DML).
5	REP5-005	REP5-009	- Part 1, Article 2 insertion of additional interpretations. - Part 2, Article 5 changes to Benefits of the Order following ExA's draft changes to the DCO [PD-013]. - Insertion of new Schedule 1, part 3 Requirements 41 (landscape enhancement), 42 (public rights of way enhancement) to reflect that the compensation payments in respect of landscape enhancement to both SDNPA and Horsham DC will be secured through a s106 Agreement but that the Agreement was not concluded by the close of the Examination. - Insertion of new Schedule 1, Part 3 Requirement 43 (European protected species licence) at the request of the ExA [PD-013].

APPENDIX A: REFERENCE TABLES

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024
(A:XII)

Deadline No.	EL Ref	Comment on Changes	ExA's Commentary on Notable Changes Made
			- Alterations to Schedule 1 Part 3 Requirements 8, 14, 19 and 38; to Schedule 10 Parts 4 and 5 and Schedules 11 and 12 (DML).
6 (Final)	REP6-007	REP6-012	- Part 1, Article 2 insertion of additional interpretations. - Alterations to Schedule 1 Part 3 Requirements 23, 39 41 (retitled "Horsham District mitigation and enhancement"); 42 to Schedule 10 Parts 3 and 5 and Schedules 11 and 12 (DML). - Amendment to Schedule 7 (new rights) inclusion of Plot 34/28.

APPENDIX A: REFERENCE TABLES

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(A:XIII)

APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation/Usage	Reference
AA	Appropriate Assessment
ADD	Acoustic Deterrent Device
ADMS	Atmospheric Dispersion Modelling System
ADR	Alternative Dispute Resolution
AEoI	Adverse Effects on Integrity
AEP	Annual Exceedance Probability
ALC	Agricultural Land Classification
AIA	Arboricultural Impact Assessment
AIL	Abnormal Indivisible Load
AONB	Area of Outstanding Natural Beauty
ANS	Artificial Nesting Structure
AP	Affected Person
ATC	Air Traffic Control
AQMA	Air Quality Management Areas
Arun DC	Arun District Council
ASI	Accompanied Site Inspection
BAP	Biodiversity Action Plan
BDMPS	Biologically Defined Minimum Population Scale
BMVAL	
BNG	Biodiversity Net Gain
BoR	Book of Reference
Brighton & Hove CC	Brighton & Hove City Council
BSAC	British Sub Aqua Club
CA	Compulsory Acquisition
CAA	Civil Aviation Authority
CA Guidance	Planning Act 2008 – Guidance related to Procedures for the Compulsory Acquisition of Land, DCLG September 2013 (the former Department for Communities and Local Government)
CAH	Compulsory Acquisition Hearing
CAP	Civilian Airline Publication

APPENDIX B: LIST OF ABBREVIATIONS

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(B:I)

Abbreviation/Usage	Reference
CA Regulations	Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CBRA	Cable Burial Risk Assessment
CCA2008	Climate Change Act 2008
CEA	Cumulative Effects Assessment
CFLO	Company Fisheries Liaison Officer
CHA	Competent Harbour Authority
CION	Connections Infrastructure Option Notice
CNP	Critical National Priority
CoCP	Code of Construction Practice
COMAH	Control of Major Accidents Hazards Regulations 1999
CP	Cable Protection
CSIP	Cable Specification and Installation Plan
CTMP	Construction Traffic Management Plan
CvR	CowfoldvRampion
CWC	Coastal West Channel
DAS	Design and Access Statement
dB	Decibel
DBBC	Double Big Bubble Curtains
DCLG Guidance	Guidance on Compulsory Purchase and the Crichel Down Rules, DCLG 2015 (the former Department for Communities and Local Government)
DCO	Development Consent Order
draft DCO	Draft Development Consent Order
DEFRA	Department for the Environment, Food and Rural Affairs
DfT	Department for Transport
DML	Deemed Marine Licence
DMRB	Design Manual for Roads and Bridges
DoWCoP	Definition of Waste Code of Practice
EA	The Environment Agency
EATM	Environmental Assessment of Road Traffic
eBBC	enhanced Big Bubble Curtain

APPENDIX B: LIST OF ABBREVIATIONS

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(B:II)

Abbreviation/Usage	Reference
ECC	Export Cable Corridor
EEA	European Economic Area
EA2010	Equality Act 2010
ECHR	European Convention on Human Rights
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
EIA Regulations	Environmental Impact Assessment Regulations 2017
EL	Examination Library
EM	Explanatory Memorandum
EMF	Electromagnetic field
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
EPS	European Protected Species
ERCOP	Emergency Response and Cooperation Plan
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
FFC	Flamborough and Filey Coast
FLCP	Fisheries Liaison and Co-existence Plan
FLL	Functionally Linked Land
FLOWW	Fishing Liaison with Offshore Wind and Wet Renewables
FRAP	Flood Risk Activity Permit
FS	Funding Statement
FTE	Full Time Equivalent
FWQ	Further Written Questions
GBBG	Great Black-Backed Gull
GEART	Guidelines for the Environmental Assessment of Road Traffic
GHGs	Greenhouse Gas(es)
GRIMP	Guillemot and Razorbill Implementation and Monitoring Plan
Ha	Hectares

APPENDIX B: LIST OF ABBREVIATIONS

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(B:III)

Abbreviation/Usage	Reference
Habitats Regulations	The Conservation of Habitats and Species Regulations 2017 (as amended)
HDD	Horizontal Directional Drilling
HE	Historic England
HGV	Heavy Goods Vehicle
Horsham DC	Horsham DC
HoTs	Heads of Terms
HPI	Habitats of Principal Importance
HRA	Habitats Regulations Assessment
HSA	Habitat Suitability Assessment
IAP	Initial Assessment of Principal Issues
IAQM	Institute of Air Quality Management
ICES	International Council for the Exploration of the Sea
ICNIRP	International Commission on Non-Ionizing Radiation Protection
IEMA	Institute of Environmental Management and Assessment
IFP	Instrument Flight Procedures
IHLS	International Herring Larvae Surveys
IP(s)	Interested Party(ies)
IPSFMP	In Principle Sensitive Features Mitigation Plan
IROPI	Imperative Reasons of Overriding Public Interest
ISH	Issue Specific Hearing
ITAP	Institute for Technical and Applied Physics
KIMP	Kittiwake Implementation and Monitoring Plan
km	Kilometre(s)
LACRs	Longer Alternative Cable Routes
LEMP	Landscape Ecological Management Plan
LER	Land Engagement Reports
LGV	Light Goods Vehicle
LHA	Local Highway Authority
LIR	Local Impact Report
LLFA	Lead Local Flood Authority

APPENDIX B: LIST OF ABBREVIATIONS

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(B:IV)

Abbreviation/Usage	Reference
LONI	Letters of No Impediment
LPA	Local Planning Authority
LRT	Land Rights Tracker
LSE	Likely Significant Effects
LSEI	Likely Significant Effects in Combination
LURA2023	the Levelling-up and Regeneration Act 2023
LWS	Local Wildlife Site
m	Metre(s)
MAA	Military Aviation Authority
MAFF	Ministry of Agriculture, Fisheries and Food
MCA	Maritime Coastguard Agency
MCAA2009	Marine and Coastal Access Act 2009
MCZ	Marine Conservation Zones
MDS	Maximum Design Scenario
MEEB	Measures of Equivalent Environmental Benefit
MGN	Marine Guidance Note
MHWS	Mean High Water Springs
Mid Sussex DC	Mid Sussex District Council
MLWS	Mean Low Water Spring
MMP	Materials Management Plan
MMMP	Marine Mammal Mitigation Protocol
MMO	Marine Management Organisation
MoD	Ministry of Defence
MPA	Marine Protected Areas
MRF	Marine Recovery Fund
MSA	Mineral Safeguarding Area
MU	Management Unit
MWWC	Marine Wildlife Watching Code
NAS	Noise Abatement Systems
NCA	National Character Areas
NE	Natural England

APPENDIX B: LIST OF ABBREVIATIONS

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(B:V)

Abbreviation/Usage	Reference
NERC	Natural Environment and Rural Communities Act 2006
NESO	National Energy System Operator
NEWLS	NE's Wildlife Licensing Service
NGET	National Grid Electricity Transmission
NH	National Highways
NIS	National Infrastructure Strategy
NOTAMs	Notices to Airmen
NP	National Parks
NPA2017	Neighbourhood Planning Act 2017
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NR	Network Rail
NRA	Navigation Risk Assessment
NRIL	Network Rail Infrastructure Ltd
NSIP	Nationally Significant Infrastructure Project
NSN	National Site Network
NT	National Trust
NVMP	Noise and Vibration Management Plan
OAQMP	Outline Air Quality Management Plan
OAQMS	Outline Air Quality Mitigation Strategy
OCC	Onshore Cable Corridor
OCoCP	Outline Code of Construction Practice
OODR	Outline Operational Drainage Plan
OCTMP	Outline Construction Traffic Management Plan
OCWTP	Outline Construction Workforce Travel Plan
OESEA2	Offshore Energy Strategic Environmental Assessment 2
OFH	Open Floor Hearing
OFTO	Offshore Transmission Owner
OLEMP	Outline Landscape and Ecology Management Plan
OODP	Outline Operational Drainage Plan
OOTP	Operational Travel Plan

APPENDIX B: LIST OF ABBREVIATIONS

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(B:VI)

Abbreviation/Usage	Reference
OPRoWMP	Outline Public Rights of Way Management Plan
OSSES	Outline Skills and Employment Strategy
OSWMP	Outline Site Waste Management Plan
OVRRP	Outline Vegetation Retention and Removal Plan
OWF	Offshore Wind Farm
PA2008	Planning Act 2008
PADS	Principal Areas of Disagreement Statement
PC	Parish Council
PD	Procedural Decision
PEC	Pilot Exemption Certificate
PEIR	Preliminary Environmental Impact Report
PEMP	Project Environmental Management Plan
PEXA	Practice and Exercise Areas
PLGR	Pre-lay Grapnel Run
PM	Preliminary Meeting
PM ₁₀ and PM _{2.5}	Particulate matter
PP	Protective Provision
PPG	Planning Practice Guidance
PRoW	Public Rights of Way
PSED	Public Sector Equality Duty
PTS	Permanent Threshold Shift
RIAA	Report to Inform Appropriate Assessment
RIES	Report on the Implications for European Sites
RR	Relevant Representation
RSAs	Road Safety Audits
Rule 6	Rule 6 letter of the Infrastructure Planning (Examination Procedure) Rules 2010
Rule 8	Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010
s()	Section of an Act
SA	Side Agreement
SAC	Special Areas of Conservation

APPENDIX B: LIST OF ABBREVIATIONS

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(B:VII)

Abbreviation/Usage	Reference
SAR	Search and Rescue
SCA	Seascape Character Areas
SDLP	South Downs Local Plan
SDNPA	South Downs National Park Authority
SDNP	South Downs National Park
SDTA	South Downs Training Area
SEA	Strategic Environmental Assessment
SEL	Sound Exposure Level
SEPN	South-East Power Networks Plc
SEZ	Structures Exclusion Zone
SFMP	Sensitive Features Mitigation Plan
SGN	Southern Gas Networks Plc
SHA	Statutory Harbour Area
SIP	Site Integrity Plan
SLVIA	Seascape, Landscape and Visual Impact Assessment
SMS	Safety Management System
SMP	Soils Management Plan
SNCB	Statutory Nature Conservation Body
SNOWS	Sussex North Offsetting Water Scheme
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SPL	Sound Pressure Level
SPP	Special Parliamentary Procedure
SPA	Special Protection Areas
SPZ	Source Protection Zone
SQ	Special Quality
SRN	Strategic Road Network
SSC	Suspended Sediment Concentrations
SSPD	Scottish and Southern Power Distribution Ltd
SSSI	Site of Special Scientific Interest
Statement of Commonality	Statement of Commonality for Statements of Common Ground

APPENDIX B: LIST OF ABBREVIATIONS

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(B:VIII)

Abbreviation/Usage	Reference
SU	Statutory Undertaker
SuDS	Sustainable Drainage Systems
Sussex IFCA	Sussex Inshore Fisheries and Conservation Authority
SWS	Southern Water Services Ltd
TAFL	Transmission Asset Agreement for Lease
TCE	The Crown Estate
TcR	Tc Rampion OFTO Ltd
TCPA1990	Town and Country Planning Act 1990
TEMPro	Trip End Model Presentation Program
The Inspectorate	The Planning Inspectorate
TOCO	Transmission Owner Construction Offer
TP	Temporary Possession
TWA	Transport and Works Act
TSS	Traffic Separation Scheme
TTS	Temporary Threshold Shift
UCI	Upper Confidence Interval
UK	United Kingdom
UKPN	UK Power Networks (Operations) Ltd
USI	Unaccompanied Site Inspection
UXO	Unexploded Ordnance
UXO MMMP	Unexploded Ordnance Clearance Marine Mammal Mitigation Protocol
VMS	Vessel Monitoring System
WFD	Water Framework Directive
West Sussex CC	West Sussex County Council
Worthing BC	Worthing Borough Council
WQ	Written Questions
WR	Written Representation
WSI	Written Scheme of Investigation
WTG	Wind Turbine Generators
ZOI	Zone of Influence

APPENDIX B: LIST OF ABBREVIATIONS

Rampion 2 Offshore Wind Farm Extension Project

REPORT TO SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO: 6 November 2024

(B:IX)

APPENDIX C: THE RECOMMENDED DCO

202X No. XX

INFRASTRUCTURE PLANNING

The Rampion 2 Offshore Wind Farm Order 20XX

<i>Made</i>	- - - -	<i>202X</i>
<i>Laid before Parliament</i>		<i>202X</i>
<i>Coming into force</i>	- -	<i>202X</i>

CONTENTS

**PART 1
PRELIMINARY**

1. Citation and commencement
2. Interpretation

**PART 2
PRINCIPAL POWERS**

3. Development consent etc. granted by the Order
4. Power to maintain the authorised project
5. Benefit of the Order
6. Application and modification of legislative provisions
7. Interaction with the Rampion Offshore Wind Farm Order 2014
8. Defence to proceedings in respect of statutory nuisance

**PART 3
STREETS**

9. Street works
10. Application of the 1991 Act
11. Temporary closure of streets
12. Public rights of way
13. Access to works
14. Agreements with street authorities
15. Power to alter layout etc. of streets
16. Temporary speed limits

PART 4 SUPPLEMENTAL POWERS

- 17. Discharge of water
- 18. Protective work to buildings
- 19. Authority to survey and investigate the land onshore
- 20. Removal of human remains
- 21. Public rights of navigation
- 22. Temporary suspension of public access to access land

PART 5 POWERS OF ACQUISITION

- 23. Compulsory acquisition of land
- 24. Time limit for exercise of authority to acquire land compulsorily or to take land temporarily
- 25. Compulsory acquisition of rights and imposition of restrictive covenants
- 26. Private rights over land
- 27. Power to override easements and other rights
- 28. Application of the 1981 Act
- 29. Modification of the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017
- 30. Modification of Part 1 of the 1965 Act
- 31. Acquisition of subsoil or airspace only
- 32. Rights under or over streets
- 33. Temporary use of land for carrying out the authorised project
- 34. Temporary use of land for maintaining the authorised project
- 35. Compulsory acquisition of land – incorporation of the mineral code
- 36. Statutory undertakers
- 37. Apparatus and rights of statutory undertakers in stopped up streets
- 38. Recovery of costs of new connections
- 39. Special Category Land

PART 6 OPERATIONS

- 40. Operation of generating station
- 41. Deemed marine licences under the 2009 Act

PART 7 MISCELLANEOUS AND GENERAL

- 42. Application of landlord and tenant law
- 43. Operational land for purposes of the 1990 Act
- 44. Felling or lopping of trees and removal of hedgerows
- 45. Trees subject to tree preservation orders
- 46. Abatement of works abandoned or decayed
- 47. Procedure in relation to certain approvals etc.
- 48. Arbitration
- 49. Saving provisions for Trinity House

50. Crown rights
51. Certification of plans and documents, etc.
52. Protective provisions
53. Funding
54. No double recovery
55. Disregard of certain improvements, etc
56. Set-off for enhancement in value of retained land
57. Service of notices
58. Inconsistent planning permissions
59. Compensation measures

SCHEDULES

- SCHEDULE 1 — AUTHORISED PROJECT
 - PART 1 — THE AUTHORISED DEVELOPMENT
 - PART 2 — ANCILLARY WORKS
 - PART 3 — REQUIREMENTS
- SCHEDULE 2 — STREETS SUBJECT TO STREET WORKS
- SCHEDULE 3 — STREETS TO BE TEMPORARILY CLOSED
- SCHEDULE 4 — PUBLIC RIGHTS OF WAY
 - PART 1 — PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED
 - PART 2 — PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED AND A TEMPORARY SUBSTITUTE PROVIDED
 - PART 3 — PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED AND A TEMPORARY SUBSTITUTE TO BE AGREED
- SCHEDULE 5 — ACCESS TO WORKS
- SCHEDULE 6 — TEMPORARY SUSPENSION OF PUBLIC ACCESS TO ACCESS LAND
- SCHEDULE 7 — ACQUISITION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS ONLY
- SCHEDULE 8 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS
- SCHEDULE 9 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 10 — PROTECTIVE PROVISIONS
 - PART 1 — PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
 - PART 2 — PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
 - PART 3 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER
 - PART 4 — FOR THE PROTECTION OF SOUTHERN ELECTRIC POWER DISTRIBUTION PLC AS ELECTRICITY UNDERTAKER
 - PART 5 — FOR THE PROTECTION OF SOUTHERN GAS NETWORKS PLC AS GAS UNDERTAKER
 - PART 6 — FOR THE PROTECTION OF RAILWAY INTERESTS
 - PART 7 — FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED
- SCHEDULE 11 — DEEMED MARINE LICENCE UNDER THE 2009 ACT—GENERATION ASSETS
 - PART 1 — LICENSED MARINE ACTIVITIES

PART 2 —	CONDITIONS
SCHEDULE 12 —	DEEMED MARINE LICENCE UNDER THE 2009 ACT— TRANSMISSION ASSETS
PART 1 —	LICENSED MARINE ACTIVITIES
PART 2 —	CONDITIONS
SCHEDULE 13 —	HEDGEROWS
PART 1 —	REMOVAL OF HEDGEROWS
PART 2 —	REMOVAL OF IMPORTANT HEDGEROWS
SCHEDULE 14 —	PROCEDURE FOR DISCHARGE OF CERTAIN APPROVALS
SCHEDULE 15 —	ARBITRATION RULES
SCHEDULE 16 —	DOCUMENTS TO BE CERTIFIED
PART 1 —	DOCUMENTS FORMING PART OF THE ENVIRONMENTAL STATEMENT TO BE CERTIFIED
PART 2 —	OTHER DOCUMENTS TO BE CERTIFIED
SCHEDULE 17 —	COMPENSATION TO PROTECT THE COHERENCE OF THE NATIONAL SITE NETWORK

An application has been made to the Secretary of State under section 37 of the Planning Act 2008 (“the 2008 Act”)(a) and in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an order granting development consent.

The application was examined by the Examining Authority appointed by the Secretary of State pursuant to section 61 and section 65 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of that Act and with the Infrastructure Planning (Examination) Procedure Rules 2010(c). The Examining Authority has submitted a report to the Secretary of State under section 74(2) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(d) and, as a national policy statement has effect in relation to the proposed development, has had regard to the documents and matters referred to in section 104(2) of the 2008 Act).

The Secretary of State, having decided the application, has determined to make an Order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

In accordance with section 132(3) of the 2008 Act, the Secretary of State is satisfied having considered the report of the Examining Authority, that the parcels of common and open space land comprised within the Order land as identified in the book of reference, when burdened with a new right or the imposition of a restrictive covenant created under this Order, will be no less advantageous than they were before the making of this Order, to the following persons: (a) the persons in whom they are vested, (b) other persons, if any, entitled to rights of common or other rights, and (c) the public.

(a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20). Section 37 was amended by sections 128 (2) and 137 of, and paragraphs 1 and 5 of Part 1 of Schedule 13 to, the Localism Act 2011 (c. 20).

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2018/378 and S.I. 2019/734.

(c) S.I. 2010/103 amended by S.I. 2012/635.

(d) S.I. 2017/572.

The Secretary of State, in exercise of the powers conferred by sections 114(a), 115(b), 120(c), 140, 149A(d) and 150 of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Rampion 2 Offshore Wind Farm Order 202X and comes into force on [].

Interpretation

- 2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(e);

“the 1965 Act” means the Compulsory Purchase Act 1965(f);

“the 1980 Act” means the Highways Act 1980(g);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(h);

“the 1984 Act” means the Road Traffic Regulation Act 1984(i)

“the 1989 Act” means the Electricity Act 1989(j);

“the 1990 Act” means the Town and Country Planning Act 1990(k);

“the 1991 Act” means the New Roads and Street Works Act 1991(l);

“the 2003 Act” means the Communications Act 2003(m);

“the 2004 Act” means the Energy Act 2004(n);

“the 2008 Act” means the Planning Act 2008(o);

“the 2009 Act” means the Marine and Coastal Access Act 2009(p);

“2017 Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(q);

“access land” has the same meaning as in Part 1 of the Countryside and Rights of Way Act 2000;

“access rights of way and streets plan” means the plan or plans certified as the access rights of way and streets plan or plans by the Secretary of State for the purposes of this Order under article 51 (certification of plans and documents etc);

“ancillary works” means the ancillary works described in Part 2 of Schedule 1 (ancillary works) and any other works authorised by this Order and which are not development within the meaning of section 32 of the 2008 Act;

“array area” means that part of the offshore Order limits in which Work Nos. 1, 2 and 3 may be undertaken as described in Tables 2 and 3 of Part 1 of Schedule 1 (authorised development);

-
- (a) Section 114 was amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
- (b) Section 115 was amended by paragraph 56 of Part 1 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011, section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
- (c) Section 120 was amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
- (d) Section 149A was inserted by paragraph 4(1) of Part 1 of Schedule 8 to the Marine and Coastal Access Act 2009 (c. 23).
- (e) 1961 c. 33.
- (f) 1965 c. 56.
- (g) 1980 c. 66.
- (h) 1981 c. 66.
- (i) 1984 c. 27.
- (j) 1989 c. 66.
- (k) 1990 c. 8.
- (l) 1991 c. 22.
- (m) 2003 c. 21.
- (n) 2004 c. 20.
- (o) 2008 c. 29.
- (p) 2009 c. 23.
- (q) S.I. 2017/572

“array periphery” means the outermost edge of the infrastructure to be constructed as Work No. 1 as described in Part 1 of Schedule 1 and identified in the design plan to be approved pursuant to the deemed marine licences;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 (authorised development) and any other development authorised by this Order which is development within the meaning of section 32 of the 2008 Act;

“authorised project” means the authorised development and the ancillary works authorised by this Order;

“bank holiday” means a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971;

“book of reference” means the document certified as the book of reference by the Secretary of State for the purposes of the Order under article 51;

“building” includes any structure or erection or any part of a building, structure or erection;

“buoy” means any floating device used for navigational purposes or measurement purposes including LiDAR buoys, wave buoys and guard buoys;

“cable circuits” means a number of electrical conductors necessary to transmit electricity between two points within the authorised project comprising three conductors which may be bundled as one transmission cable or take the form of three separate transmission cables, and the circuit may include one or more auxiliary cables (normally fibre optic cables) for purposes including control, monitoring, protection or general communications to comprise direct lay cable circuits and/or cable circuits pulled through cable ducts or under protective covers;

“cable crossings” means a crossing of existing sub-sea cables or pipelines or other existing infrastructure by a transmission cable or, where transmission cables run together in parallel, a set of transmission cables, authorised by this Order together with physical protection measures including rock placement or other protection measures;

“cable ducts” means conduits for the installation of cable circuits;

“cable protection” means measures for the protection of cable circuits from physical damage and exposure including but not limited to concrete mattresses and/or rock placement, bagged solutions filled with stone, rock or gravel, grout, concrete or other materials and protective shells or sheathes;

“carriageway” has the same meaning as in section 329 of the 1980 Act;

“commence” means—

- (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for operations consisting of pre-construction surveys and monitoring approved under the deemed marine licences; and
- (b) in respect of any other works comprised in the authorised project, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project,

and the words “commencement” and “commenced” must be construed accordingly;

“commercial operation” means in relation to any part of the authorised project, the exporting transmission or conversion on a commercial basis, of electricity;

“connection works” means Work Nos. 6, 7, 8, 9, 16, 19 and 20, and any related further associated development in connection with those works within the onshore Order limits;

“construction compound” means a temporary construction area associated with the connection works including (but not limited to) hard standings, lay down and storage areas for construction plant, materials and equipment, parking areas, offices, welfare facilities, and temporary means of enclosure for construction of the authorised project;

“deemed marine licences” means the marine licences set out in Schedule 11 (deemed marine licence under the 2009 Act – generation assets) and Schedule 12 (deemed marine licence under the 2009 Act – transmission assets);

“design and access statement” means the document certified as the design and access statement by the Secretary of State for the purposes of this Order under article 51;

“draft piling marine mammal mitigation protocol” means the document certified as the draft piling marine mammal mitigation protocol by the Secretary of State for the purposes of this Order under article 51;

“draft UXO marine mammal mitigation protocol” means the document certified as the draft UXO marine mammal mitigation protocol by the Secretary of State for the purposes of this Order under article 51;

“electrical infrastructure installation” means equipment installed for the transmission of electricity at the onshore substation or the extension to the National Grid substation at Bolney which is not contained within a building;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order under article 51;

“flow energy dissipation devices” means solutions that dissipate flow energy and entrap sediment, and including options such as frond mats, mats of large, linked hoops, and structures covered with long spikes;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“horizontal directional drilling” refers to a boring technique involving drilling in an arc between two points;

“Horsham District mitigation and enhancement principles document” means the document certified as the Horsham District mitigation and enhancement principles document by the Secretary of State for the purposes of this Order under article 51;

“in-principle sensitive features mitigation plan” means the document certified as the in principle sensitive features mitigation plan by the Secretary of State for the purposes of this Order under article 51;

“intrusive activities” means offshore activities including anchoring of vessels, jacking up of vessels, depositing soil and seabed clearance and temporary wet storage areas;

“joint bay” means an excavation structure or working area comprising part of the connection works beneath the ground to facilitate the jointing together of the cable circuits and any auxiliary cables;

“land plans” means the plan or plans certified as the land plan or plans by the Secretary of State for the purposes of this Order under article 51;

“landfall” means the location at which the offshore cable circuits come ashore and are connected to the onshore connection works comprising Work Nos. 6 and 7 as described in Part 1 of Schedule 1;

“LAT” means lowest astronomical tide;

“lead local flood authority” has the meaning in section 6(7) (other definitions) of the Flood and Water Management Act 2010(a);

“link box” means the underground metal box placed within a plastic or concrete pit where the metal sheaths between adjacent cable circuit sections are connected and earthed installed within a ground level manhole or inspection chamber to allow access to the link box for regular maintenance or fault-finding purposes;

“maintain” includes inspect and survey, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace, to the extent assessed in the environmental statement; and any derivative of “maintain” must be construed accordingly;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“mean low water springs” or “MLWS” means the lowest level which spring tides reach on average over a period of time;

“MMO” means the Marine Management Organisation or its successor in function;

“monopile foundation” means a steel pile, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“multileg foundation” means a steel structure having multiple legs, which is fixed to the seabed and may include scour protection and additional equipment such as, J-tubes, corrosion protection systems and access platforms;

“National Highways” means National Highways Limited (company number 09346363) whose registered office is Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ or any such successor or replacement body that may from time to time be primarily responsible for the functions, duties and responsibilities currently exercised by that statutory body;

“National Park enhancement and furtherance principles document” means the document certified as the National Park enhancement and furtherance principles document by the Secretary of State for the purposes of this Order under article 51;

“National Trail” means the public right of way known as the South Downs Way and within the Order land comprises part of restricted byway 2092 and restricted byway 2693;

(a) 2010 c. 29.

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006^(a)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“non-intrusive works” means works within the onshore Order limits which do not require the breaking of the surface of the land;

“offshore in-principle monitoring plan” means the document certified as the offshore in-principle offshore monitoring plan by the Secretary of State for the purposes of this Order under article 51;

“offshore substation” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks which may include a helicopter platform, and containing—

- (a) electrical equipment required to switch, transform, convert electricity generated at the wind turbine generators to a higher voltage; and
- (b) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or wind turbine generators;

“offshore Order limits” means those parts of the Order limits identified on the offshore Order limits and grid co-ordinates plan;

“offshore Order limits and grid co-ordinates plan” means the plan showing the offshore Order limits and grid co-ordinates certified as the offshore Order limits and grid co-ordinates plan by the Secretary of State for the purpose of this Order under article 51;

“offshore works” means Work Nos. 1 to 6 and any related further associated development in connection with those works seawards of MHWS;

“offshore works plan” means the plan or plans showing the offshore works which are certified as the offshore works plan or plans by the Secretary of State for the purposes of the Order under article 51;

“onshore Order limits” means that part of the Order limits within which the onshore works may be carried out;

“onshore substation” means the compound comprising the transformer substation, containing electrical equipment required to switch, transform and convert electricity voltage and provide reactive power compensation, with external drainage infrastructure landscaping and means of access comprising Work No. 16;

“onshore site preparation works” means operations consisting of site clearance, demolition, pre-planting of landscaping works, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, creation of site accesses, the temporary display of site notices or advertisements, and temporary hardstanding or the erection of welfare facilities associated with such works;

“onshore works” means Work Nos. 7 to 20 and any related associated development in connection with those works;

“onshore works plan” means the plan or plans showing the onshore works which are certified as the onshore works plan or plans by the Secretary of State for the purposes of the Order under article 51;

“open access land plan” means the document certified as the open access land plan by the Secretary of State for the purposes of this Order under article 51;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;

“the Order limits” means the limits shown on the onshore works plans and offshore works plans within which the authorised project may be carried out, whose grid coordinates seaward of MHWS are set out in Part 1 of Schedule 1 to this Order;

“outline air quality management plan” means the document certified as the outline air quality management plan by the Secretary of State for the purposes of this Order under article 51;

(a) 2006 c. 46

“outline cable burial risk assessment” means the document certified as the outline cable burial risk assessment by the Secretary of State for the purposes of this Order under article 51;

“outline cable specification and installation plan” means the document certified as the outline cable specification and installation plan by the Secretary of State for the purposes of this Order under article 51;

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State for the purposes of this Order under article 51;

“outline construction communication plan” means the document certified as the outline construction communication plan by the Secretary of State for the purposes of this Order under article 51;

“outline construction method statement” means the document certified as the outline construction method statement by the Secretary of State for the purposes of this Order under article 51;

“outline construction traffic management plan” means the document certified as the outline construction traffic management plan by the Secretary of State for the purposes of this Order under article 51;

“outline diver communications plan” means the document certified as the outline diver communications plan by the Secretary of State for the purposes of this Order under article 51;

“outline fisheries liaison and co-existence plan” means the document certified as the outline fisheries liaison and co-existence plan by the Secretary of State for the purposes of this Order under article 51;

“outline landscape and ecological management plan” means the document certified as the outline landscape and ecological management plan by the Secretary of State for the purposes of this Order under article 51;

“outline marine written scheme of investigation” means the document certified as the outline marine written scheme of investigation by the Secretary of State for the purposes of this Order under article 51;

“outline noise and vibration management plan” means the document certified as the outline noise and vibration management plan by the Secretary of State for the purposes of this Order under article 51;

“outline onshore construction workforce travel plan” means the document certified as the outline onshore construction workforce travel plan by the Secretary of State for the purposes of this Order under article 51;

“outline onshore written scheme of investigation” means the document certified as the outline onshore written scheme of investigation by the Secretary of State for the purposes of this Order under article 51;

“outline operational drainage plan” means the document certified as the outline operational drainage plan by the Secretary of State for the purposes of this Order under article 51;

“outline operational travel plan” means the document certified as the outline operational travel plan by the Secretary of State for the purposes of this Order under article 51;

“outline operations and maintenance plan” means the document certified as the outline operations and maintenance plan by the Secretary of State for the purposes of this Order under article 51;

“outline project environmental management plan” means the document certified as the outline project environmental management plan by the Secretary of State for the purposes of this Order under article 51;

“outline public rights of way management plan” means the plan or plans certified as the outline public rights of way management plan by the Secretary of State for the purposes of this Order under article 51;

“outline scour protection and cable protection plan” means the plan or plans certified as the outline scour protection and cable protection plan by the Secretary of State for the purposes of this Order under article 51;

“outline site waste management plan” means the document certified as the outline site waste management plan by the Secretary of State for the purposes of this Order under article 51;

“outline skills and employment strategy” means the document certified as the outline skills and employment strategy by the Secretary of State for the purposes of this Order under article 51;

“outline soils management plan” means the document certified as the outline soils management plan by the Secretary of State for the purposes of this Order under article 51;

“outline vegetation retention and removal plan” means the document certified as the outline vegetation retention and removal plan by the Secretary of State for the purposes of this Order under article 51;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

(a) 1981 c. 67. Section 7 was amended by Section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 74).

“pin piles” means cylindrical metal piles driven and/or drilled into the seabed to secure multileg foundations;

“public rights of way and landscape enhancement principles document” means the document certified as the public rights of way and landscape enhancement principles document by the Secretary of State for the purposes of this Order under article 51;

“relevant planning authority” means in relation to any given provision of this Order (including the requirements) the local planning authority for the land in question:

- (a) for the area of land comprising a stage to which the provision relates is situated; and
- (b) with the relevant legislative competence under the 1990 Act for the matter to which the provision relates;

“relevant traffic authority” means in any provision of this Order the traffic authority for any area of land to which that provision relates;

“requirements” means, or a reference to a numbered requirement is to, those matters set out in Part 3 of Schedule 1 (requirements) to this Order;

“scour protection” means measures to prevent loss of seabed sediment around any structure placed in or on the seabed using methods including rock or gravel placement, concrete mattresses, flow energy dissipation devices, or bagged solutions;

“special category land plans” means the plan or plans certified as the special category land plan or plans by the Secretary of State for the purposes of this Order under article 51;

“stage” means a part of the onshore works within the onshore Order limits identified in the written scheme approved under requirement 10;

“statutory nature conservation body” means the appropriate nature conservation body as defined in regulation 5 of the Conservation of Habitats and Species Regulations 2017;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act or a public communications provider as defined in section 151 of the 2003 Act;

“strategic road network” means any part of the highway network including trunk roads, special roads or streets for which National Highways is the highway authority;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any part of a footpath and any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“suction bucket” means a steel cylindrical structure attached to the legs of a multileg foundation which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“traffic authority” has the same meaning as in section 121A (traffic authorities) of the 1984 Act;

“transition joint bay” an excavation structure or working area formed in proximity to the landfall to allow the jointing of the offshore export cable circuits with the onshore export cable circuits;

“transition piece” means the metal structure attached to the top of the foundation where the base of the wind turbine generator is connected and may include additional equipment such as J-tubes, corrosion protection systems, boat access systems, access platforms, craneage, electrical transmission equipment and associated equipment;

“transmission cable” means any onshore or offshore cables for the transmission of electricity and communications and includes direct lay cables and/or cables pulled through cable ducts or under protective covers as part of a cable circuit;

“tree preservation order and hedgerow plan” means the plan or plans certified as the tree preservation order and hedgerow plan or plans by the Secretary of State for the purposes of this Order under article 51;

“trenchless technology” means a cable installation method to install the cable circuits underground by means other than open cut, including horizontal directional drilling;

“trunk road” means a highway which is a trunk road by virtue of

- (a) section 10 or 19(1) of the 1980 Act;
- (b) an order or direction under section 10 of the 1980 Act; or
- (c) any other enactment;

“undertaker” means Rampion Extension Development Limited (company number 12091939);

“vessel” means every description of vessel, however propelled or moved, and includes a non- displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle, transition piece and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation; and

“Working in Proximity to Wildlife in the Marine Environment Protocol” means the document certified as the Working in Proximity to Wildlife in the Marine Environment Protocol by the Secretary of State for the purpose of this Order under article 51.

(3) References in this Order to rights over land and watercourses include references to rights to do or restrain or to place and maintain, anything in, on or under the land or watercourse or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over the land or watercourse which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or which is an interest otherwise comprised in the Order land. Rights acquired or restrictive covenants imposed under this Order may be exercised or enforced as the case may be by the undertaker, or such other statutory undertaker or person for whose benefit the right or restrictive covenant is acquired, by its successors in title, assigns, lessees and by those deriving title from them and all persons authorised by any of these.

(4) All distances, directions, capacities and lengths referred to in this Order are approximate save in respect of the parameters referred to in—

- (a) requirements 2 to 5 in Part 3 of Schedule 1 (requirements);
- (b) conditions 1 and 2 in Part 2 of Schedule 11 (conditions); and
- (c) conditions 1 and 2 in Part 2 of Schedule 12 (conditions).

(5) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(6) The expression “includes” must be construed without limitation unless the contrary intention appears.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out.

(2) Subject to the requirements in Schedule 1, and the conditions of the deemed marine licences in Schedule 11 and 12, Work Nos. 1 to 6 must be constructed within the Order limits seaward of MHWS and Work Nos. 7 to 20 must be constructed within the Order limits landward of MHWS.

Power to maintain the authorised project

4.—(1) The undertaker may at any time maintain the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain any further licence under Part 4 of the 2009 Act (marine licensing) for offshore works not covered by the deemed marine licences.

Benefit of the Order

5.—(1) Subject to this article, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Subject to sub-paragraph (5), the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (excluding the deemed marine licences) and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of the Order (excluding the deemed marine licences) and such related statutory rights as may be so agreed,

except where sub-paragraph (8) applies, in which case no consent of the Secretary of State is required.

(3) Subject to paragraph (5), the undertaker may with the written consent of the Secretary of State—

- (a) where an agreement has been made in accordance with paragraph (2)(a), transfer to the transferee the whole of any of the deemed marine licences granted under Schedules 11 or 12 of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) where an agreement has been made in accordance with paragraph (2)(b), grant to the lessee, for the duration of the period mentioned in paragraph (2)(b), the whole of any of the deemed marine licences granted under Schedules 11 or 12 of this Order and such related statutory rights as may be so agreed,

except where paragraph (8) applies, in which case no consent of the Secretary of State is required.

(4) Where an agreement has been made in accordance with sub-paragraph (2) references in this Order to the undertaker, except in sub-paragraphs (7) and (9), is to include references to the transferee or lessee.

(5) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application.

(6) On receipt of a request under paragraph (3) the Secretary of State must consult the MMO, and must have regard to any response received from the MMO within 28 days of notification before giving consent to the transfer or grant to another person of the benefit of the provisions of the deemed marine licences.

(7) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under sub-paragraphs (2) or (3)—

- (a) the benefit transferred or granted (“the transferred benefit”) is to include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit is to reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit is not enforceable against the undertaker; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under sub-paragraphs (2) or (3) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(8) The consent of the Secretary of State is required for the exercise of powers under sub-paragraphs (2) or (3) except where—

- (a) the transferee or lessee is the holder of a licence under section 6 of the 1989 Act (licences authorising supply etc.);
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of any such claim;
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(9) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State, and if such transfer or grant relates to the exercise of powers in their area, to the MMO and/or the relevant planning authority.

(10) A notice required under sub-paragraphs (5) and (9) must—

(a) state—

- (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
- (ii) subject to sub-paragraph (11), the date on which the transfer will take effect;
- (iii) the provisions to be transferred or granted;
- (iv) the restrictions, liabilities and obligations that, in accordance with sub-paragraph (7)(c), will apply to the person exercising the powers transferred or granted; and
- (v) where sub-paragraph (8)(c) does not apply, confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land; and

(b) be accompanied by—

- (i) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
- (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(11) The date specified under sub-paragraph (10)(a)(ii) in respect of a notice served in respect of sub-paragraph (9) must not be earlier than the expiry of 14 days from the date of the Secretary of State's receipt of the notice.

(12) The notice given under sub-paragraph (9) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(13) Section 72(7) and (8) of the 2009 Act (Variation, suspension, revocation and transfer) do not apply to a transfer or grant of the benefit of the provisions of any of the deemed marine licences to another person by the undertaker pursuant to this article.

Application and modification of legislative provisions

6.—(1) Regulation 6 of the Hedgerows Regulations 1997^(a) (permitted work) is modified so as to read for the purposes of this Order only as if there were inserted after sub-paragraph (1)(j) the following—

“(k) or for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008”

(2) The provisions of the Neighbourhood Planning Act 2017^(b) insofar as they relate to temporary possession of land under articles 33 (temporary use of land for carrying out the authorised project) and 34 (temporary use of land for maintaining the authorised project) of this Order do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project.

(3) This Order does not constitute a planning permission for the purposes of Part 10A of the 2008 Act (Infrastructure Levy: England) (or any statutory instrument to be made pursuant to that Part) or Part 11 of the 2008 Act (Community Infrastructure Levy) notwithstanding the definition of development in section 204E of the 2008 Act or the definition of planning permission contained within article 5 (meaning of planning permission) of the Community Infrastructure Levy Regulations 2010^(c).

(4) Section 25 of the Burial Act 1857^(d) (offence of removal of body from burial grounds) does not apply to a removal carried out in accordance with article 20 (removal of human remains) of this Order.

(5) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950^(e) do not apply to the authorised development.

(a) S.I. 1997/1160.

(b) S.I. 2017 C.20.

(c) S.I. 2010/948.

(d) 1857 c. 81.

(e) S.I. 1950/792.

Interaction with the Rampion Offshore Wind Farm Order 2014

7.—(1) As from the date of this Order the provisions of the Rampion Offshore Wind Farm Order 2014^(a) is amended as follows.

(2) For article 3 (Development consent etc granted by the Order) substitute—

“3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Subject to article 3(3) and the requirements, Work Nos. 1 to 3A may be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 3B to 32 may be constructed anywhere within the Order limits landward of MLWS.

(3) Notwithstanding article 3(1) no more than—

- (a) 116 wind turbine generators; and
- (b) 1 offshore substation,

may be constructed pursuant to this Order unless the development authorised by the Rampion 2 Offshore Wind Farm Order [20XX] has not been commenced by [date on which the powers under the Rampion 2 Offshore Order 20xx expire in accordance with Requirement 1 of Part 3 of Schedule 1] and the right to do so has expired.
”

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990^(b) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within section 79(1) of that Act (statutory nuisances and inspections therefor) no order may be made, and no fine may be imposed, under section 82(2) of that Act (summary proceedings by persons aggrieved by statutory nuisances) if—

(a) the defendant shows that the nuisance—

- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance or decommissioning of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction sites) or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974^(c); or
- (ii) is a consequence of the construction, maintenance or decommissioning of the authorised project and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance—

- (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project in compliance with requirement 29 (control of noise during operational phase); or
- (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974^(d) does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction, maintenance or decommissioning of the authorised project.

^(a) S.I. 2014/1873.

^(b) 1990 c. 43. There are amendments to section 82(1) that are not relevant to this Order.

^(c) 1974 c. 40. Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 c. 43. There are other amendments to Section 61 that are not relevant to this Order.

^(d) 1974 c. 20. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to the Order.

PART 3

STREETS

Street works

9.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in columns (2) and (3) of Schedule 2 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel within or under it;
- (b) tunnel or bore under the street;
- (c) remove or use all earth and materials in or under the street;
- (d) place and keep apparatus in on or under the street;
- (e) remove, maintain or renew apparatus in on or under the street or change its position;
- (f) execute and maintain any works to provide hard and soft landscaping; and
- (g) execute and maintain any works required for or incidental to any works referred to in sub-paragraphs (a) to (f).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) In this article “apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act.

Application of the 1991 Act

10.—(1) The provisions of the 1991 Act mentioned in sub-paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) the carrying out of works under article 9 (street works); and
- (b) the temporary closure, temporary alteration or temporary diversion of a street by the undertaker under article 11 (temporary closure of streets),

whether or not the carrying out of the works or the closure, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act are—

- (a) subject to sub-paragraph (3), section 55 (notice of starting date of works);
- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);
- (d) section 68 (facilities to be afforded to street authority);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route); and
- (h) all provisions of that Act that apply for the purposes of the provisions referred to in sub- paragraphs (a) to (g).

(3) Section 55 of the 1991 Act as applied by sub-paragraph (2) has effect as if references in section 57 of that Act to emergency works included a reference to a closure, alteration or diversion (as the case may be) required in a case of emergency.

Temporary closure of streets

11.—(1) The undertaker may, during and for the purposes of carrying out the authorised project, temporarily close, alter or divert any street and may for any reasonable time—

(a) divert the traffic or a class of traffic from the street; and

(b) subject to sub-paragraph (3), prevent all persons from passing along the street.

(2) Without limiting sub-paragraph (1), the undertaker may use any street temporarily closed under the powers conferred by this article within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary closure, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limiting sub-paragraph (1), the undertaker may temporarily close, alter or divert the streets set out in column (2) of Schedule 3 (streets to be temporarily closed) to the extent specified, by reference to the letters and numbers shown on the access rights of way and streets plans, in column (3) of that schedule.

(5) The undertaker must not temporarily close, alter, divert or use as a temporary working site—

(a) any street referred to in sub-paragraph (4) without first consulting the street authority; and

(b) any other street without the consent of the street authority, which may attach reasonable conditions to the consent.

(6) Any person who suffers loss by the suspension of any public right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under sub-paragraph (5)(b) that street authority is deemed to have granted consent.

Public rights of way

12.—(1) The undertaker may, in connection with the carrying out of the authorised project—

(a) temporarily close the public rights of way specified in columns (1) and (2) of Part 1 of Schedule 4 (public rights of way to be temporarily closed) to the extent specified in column (3) of that Part of that Schedule by reference to the numbers and letters shown on the access rights of way and streets plan;

(b) temporarily close each of the public rights of way specified in columns (1) and (2) of Part 2 of Schedule 4 (public rights of way to be temporarily closed and a temporary substitute provided) to the extent specified, in column (3) of that Part of that Schedule and provide the temporary substitute public right of way described in column (4) of that Part of that Schedule between the specified terminus points at the stage of the authorised development identified in column (4) of that Part of that Schedule;

(c) temporarily close each of the public rights of way specified in columns (1) and (2) of Part 3 of Schedule 4 (public rights of way to be temporarily closed and a temporary substitute provided to be agreed) to the extent agreed with the highway authority and in respect of the National Trail to the extent agreed with the South Downs National Park Authority and provide substitute temporary public rights of way on an alignment to be agreed with the highway authority or South Downs National Park Authority as applicable prior to the temporary closure of the public right of way concerned; and

(d) temporarily close or divert any other public right of way to the extent agreed with the highway authority.

(2) The public rights of way specified in columns (1) and (2) of Parts 2 and 3 of Schedule 4 may not be wholly or partly closed under this article unless the temporary part of the substitute public right of way referred to in column (4) of Part 2 or an alternative temporary substitute public right of way agreed by the highway authority or South Downs National Park Authority in respect of the National Trail has first been provided by the undertaker.

(3) If the highway authority or South Downs National Park Authority fails to notify the undertaker of its decision within 28 days of receiving an application for agreement under sub-paragraph (1)(c) or (1)(d) that highway authority is deemed to have granted consent.

Access to works

13.—(1) The undertaker may, for the purposes of the authorised project—

(a) form, lay out and maintain a means of access, or improve or maintain an existing means of access, in the approximate locations specified in columns (1) and (2) of Schedule 5 (access to works); and

- (b) with the approval of the relevant planning authority following consultation with the highway authority form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

(2) If the relevant planning authority fails to notify the undertaker of its decision within 45 days of receiving an application for approval under sub-paragraph (1)(b) that relevant planning authority is deemed to have granted approval.

Agreements with street authorities

14.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) any temporary closure, alteration or diversion of a street authorised by this Order; or
- (b) the carrying out in the street of any of the works referred to in article 9(1) (street works).

(2) Such agreement may, without prejudice to the generality of sub-paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Power to alter layout etc. of streets

15.—(1) Subject to sub-paragraphs (2) and (3), the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with constructing, operating and maintaining the authorised project, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing place(s).

(2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by sub-paragraph (1) must not be exercised without the consent of the street authority.

(4) Sub-paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

(5) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under sub-paragraph (3) that street authority is deemed to have granted consent.

Temporary speed limits

16.—(1) Subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised project, impose a temporary speed limit either at all times or at times, on days or during such periods, and on such highways as may be specified by the undertaker.

(2) The undertaker must not exercise the powers in paragraph (1) unless it has given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority.

(3) The temporary speed limits imposed by this Order are deemed to have been imposed by an order under the 1984 Act and—

- (a) have the same effect; and
- (b) may be varied by the relevant traffic authority in the same manner,

as any other speed limit imposed by an order under that Act.

(4) No temporary speed limit imposed by this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(a) when used in accordance with regulation 3(5) of those Regulations.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17.—(1) Subject to sub-paragraphs (3) and (4) below the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may inspect, lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to sub-paragraph (1) is determined as if it were a dispute under section 106 of the Water Industry Act 1991^(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not carry out any works to any public sewer or drain pursuant to sub-paragraph (1) except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of, or construct any works in, under, over or within eight metres of, any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the prior written consent of the Environment Agency.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 (requirement for a permit) of the Environmental Permitting (England and Wales) Regulations 2016^(b).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 and the Water Resources Act 1991 have the same meaning as in those statutory provisions.

(9) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under sub-paragraph (3) or approval under paragraph (4) that person is deemed to have granted consent or given approval, as the case may be.

Protective work to buildings

18.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or

^(a) 1991 c. 56.

^(b) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.

- (b) after the completion of that part of the authorised project in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that part of the authorised project first becomes operational.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within sub-paragraph (1) and any land within its curtilage and place on, leave on, and remove from the building any apparatus and equipment for use in connection with the survey.

(4) For the purpose of carrying out protective works under this article to a building, the undertaker may (subject to sub-paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land that is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a power under sub-paragraph (1) to carry out protective works to a building;
- (b) a power under sub-paragraph (3) to enter a building and land within its curtilage;
- (c) a power under sub-paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power under sub-paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise the power and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under sub-paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 48 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of the powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the day on which the part of the authorised project carried out in the vicinity of the building first becomes operational it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised project,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

(10) Any compensation payable under sub-paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies in respect of the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “protective works”, in relation to a building, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused to the building by the carrying out, maintenance or use of the authorised project; and
- (b) any works the purpose of which is to remedy any damage that has been caused to the building by the carrying out, maintenance or use of the authorised project.

Authority to survey and investigate the land onshore

19.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project or land on which surveys and investigations are required for the

monitoring of the authorised project or for the carrying out of ground, ecological or archaeological investigations and—

- (a) survey or investigate the land including aerial surveys carried out by drone;
- (b) without prejudice to the generality of sub-paragraph (a), survey, monitor and or investigate the land and any buildings or structures on that land for the purpose of investigating the potential effects of the authorised project on that land or buildings or structures on that land or for enabling the construction, operation use and maintenance of the authorised project;
- (c) without prejudice to the generality of sub-paragraph (b) make trial pits or boreholes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (d) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including the digging of trial trenches in such positions on the land as the undertaker thinks fit to carry out archaeological and site investigations; and
- (e) place on, leave on and remove from the land apparatus and welfare facilities for use in connection with the survey monitoring and or investigation of land, the making of trial pits or boreholes and or the carrying out of ecological and or archaeological investigations.

(2) No land may be entered or equipment placed or left on or removed from the land under sub-paragraph (1) unless at least 14 days' notice has been served on every owner or occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial pits or boreholes.

(4) No trial pits or boreholes are to be made under this article—

- (a) in land forming a railway without the consent of Network Rail;
- (b) in land held by or in right of the Crown without the consent of the Crown;
- (c) in land located within the highway boundary without the consent of the highway authority; or
- (d) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld or delayed.

(5) Following completion of any survey, monitoring or investigation works the undertaker must remove all equipment, apparatus and welfare facilities placed on the land in connection with such survey, monitoring or investigations.

(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) If a street authority or highway authority that receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under sub-paragraph 4(c) or (d), that person is deemed to have granted consent or given approval, as the case may be.

(8) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Removal of human remains

20.—(1) Before the undertaker carries out any development or works which will or may disturb any human remains in the Order land and subject to the requirements, it must remove those human remains from the Order land, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed from the Order land, the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of 2 successive weeks in a newspaper circulating in the area of the authorised project; and

(b) displaying a notice in a conspicuous place on or near to the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (3), the undertaker must send a copy of the notice to the relevant burial authority for the land from which the relevant human remains are to be removed.

(4) At any time within 56 days after the first publication of a notice under sub-paragraph (3), any person who is a personal representative or relative of any deceased person whose remains are interred in the Order land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under sub-paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with sub-paragraph (11).

(6) If the undertaker is not satisfied that any person giving notice under sub-paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

- (a) within the period of 56 days referred to in sub-paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land;
- (b) such notice is given and no application is made under sub-paragraph (7) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days;
- (c) within 56 days after any order is made by the county court under sub-paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to sub-paragraph (10), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under sub-paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in sub-paragraph (9) must be sent by the undertaker to the relevant planning authority mentioned in sub-paragraph (4).

(11) No notice is required under sub-paragraph (2) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being moved in accordance with this article.

(12) In this article 20 references to a relative of the deceased are to a person who—

- (a) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased;
- (b) is, or is a child of, a brother, sister, uncle or aunt of the deceased;

- (c) is the lawful executor of the estate of the deceased; or
- (d) is the lawful administrator of the estate of the deceased.

(13) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(14) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

Public rights of navigation

21.—(1) Subject to sub-paragraph (2), the rights of navigation over the places in the sea where any of the permanent structures are located within territorial waters will be suspended.

(2) The suspension of the rights of navigation over the places identified in sub-paragraph (1) will take effect 14 days after the undertaker has submitted a plan to the Secretary of State, Trinity House, the Maritime Coastguard Agency and the MMO showing the precise locations of the foundations of each of any such permanent structure to be constructed as part of the authorised development within territorial waters.

(3) In respect of the location of any individual permanent structure sub-paragraph (1) will cease to have effect as soon as that permanent structure has been decommissioned in accordance with a decommissioning programme approved under section 106 (approval of decommissioning programmes) of the 2004 Act and permanently removed, and the relevant rights of navigation will resume.

(4) The plan submitted in accordance with sub-paragraph (2) will be published by the undertaker as required by the Secretary of State.

(5) In this article 21 “permanent structures” means wind turbine generators and offshore substations including their foundations.

Temporary suspension of public access to access land

22.—(1) This provision applies to the access land described in Schedule 6 (temporary suspension of public access to access land).

(2) The undertaker may, in connection with the authorised project temporarily—

- (a) interfere with such parts of the access land as are affected by the authorised project by constructing, maintaining or decommissioning the relevant part of the authorised project as the undertaker considers necessary or expedient; and
- (b) close to the public such parts of the access land as are affected by the authorised project during construction, maintenance or decommissioning of the relevant part of the authorised project.

(3) No fewer than 28 days before exercising any power under sub-paragraph (2), the undertaker must notify the South Downs National Park Authority as relevant planning authority of its intention to exercise such powers.

(4) During the period of any closure referred to in sub-paragraph (2)(b), all rights of access to the public are to be suspended.

(5) The power conferred by sub-paragraph (2) must be exercised in a way which secures—

- (a) that no more of the relevant part of the access land is closed to the public at any time than is necessary in the circumstances; and
- (b) that all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction or interference is caused to the public which may be intending to use the part so closed.

(6) As soon as practicable following the exercise of any powers under sub-paragraph (2), any temporary works, plant, machinery and fencing must be removed and access to the access land restored.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

23.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate, or is incidental, to it.

(2) This article is subject to —

- (a) sub-paragraph (2) of article 25 (compulsory acquisition of rights and imposition of restrictive covenants);
- (b) article 31 (acquisition of subsoil or airspace only);
- (c) article 33 (temporary use of land for carrying out the authorised project); and
- (d) article 50 (Crown rights).

(3) The power to compulsorily acquire land conferred under paragraph (1) does not apply to the Order land shown numbered 34/29 and 34/30 on the land plans.

Time limit for exercise of authority to acquire land compulsorily or to take land temporarily

24.—(1) After the end of the period of seven years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act (Compulsory Purchase under Acquisition of Land Act 1946); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 28 (application of the 1981 Act),

in relation to any part of the Order Land.

(2) The authority conferred by article 33 (temporary use of land for carrying out the authorised project) ceases at the end of the period referred to in sub-paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and imposition of restrictive covenants

25.—(1) Subject to sub-paragraphs (2) and (3), the undertaker may acquire compulsorily such rights over, or impose such restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land), by creating them as well as by acquiring rights and the benefit of restrictions already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 7 (acquisition of new rights and imposition of restrictive covenants only) the undertaker's powers of compulsory acquisition under article 23(1) are limited to the compulsory acquisition of such new rights and the imposition of restrictive covenants over land as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant or acquires an existing right over land or the benefit of a restrictive covenant already in existence under paragraph (1) or under paragraph (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 8 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or the imposition of a restrictive covenant under sub-paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the

undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights or impose such restrictions to the relevant statutory undertaker.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under sub-paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Private rights over land

26.—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired or the restrictive covenant is imposed compulsorily, by agreement or through the grant of lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right or enforcement of the restrictive covenant,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenants under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(5) This article does not apply in relation to any right to which section 138(aa) of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 36 (statutory undertakers) applies.

(6) Sub-paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of the land,
 - (iii) the undertaker's entry onto the land, or
 - (iv) the undertaker's taking temporary possession of the land,

that any or all of those paragraphs do not apply to any right specified in the notice; and

- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restrictive covenant in question is vested or belongs.

(7) If such an agreement as is referred to in sub-paragraph (6)(b)—

- (a) is made with a person in or to whom the right or restrictive covenant is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) Reference in this article to private rights over land includes reference to any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any

natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Power to override easements and other rights

27.—(1) Any authorised activity which takes place within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the use of land arising by virtue of contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right, including any right of navigation, or advantage annexed to land and adversely affecting other land, including any natural right to support and any restrictions as to the use of land arising by virtue of a contract.

(4) Subject to article 54 (no double recovery), where any interest, right or restriction to which this article applies is overridden by paragraph (1), unless otherwise agreed, compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same way and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of sub-paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in sub-paragraph (1).

(7) Subsection (2) of section 10 of the 1965 Act applies to sub-paragraph (4) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(8) Any rule or principle applied to the construction of section 10 of the 1965 Act applies to the construction of sub-paragraph (4) with any necessary modifications.

Application of the 1981 Act

28.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by sub-paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), in subsection (1), omit the words “in themselves”.

(4) In section 1 (application of act), for subsection 2, substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order”

(5) In section 4 (execution of declaration), for subsection (1) substitute—

“(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves, or in

the case of land or a right that they are authorised to acquire for the benefit of a third party in the third party in question, from the end of such period as may be specified in the declaration (not being less than three months from the date on which the service of notices required by section 6 is completed).”

(6) In section 5(2) (earliest date for execution of declaration) omit the words from “, and this subsection” to the end.

(7) Section 5A (time limit for general vesting declaration)(a) is omitted.

(8) In section 5B (extension of time limit during challenge)(b) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order) substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act the seven year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily or to take land temporarily) of the Rampion 2 Wind Farm Order [20xx]”.

(9) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(10) In section 7(1)(a) (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(11) In section 8 (vesting, and right to enter and take possession), after subsection (3), insert —

“(4) In this section reference to the acquiring authority include any third party referred to in section 4(1).”

(12) In section 10 (acquiring authority’s liability arising on vesting of the land), in subsection (1), after “vested in an acquiring authority” insert “or a third party”.

(13) In section 11 (recovery of compensation overpaid), for subsection (1) substitute —

“(1) This section applies where after the execution of a general vesting declaration a person (“the claimant”) claims compensation in respect of the acquisition of an interest in land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest.”

(14) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute —

“(2) But see article [30(3)] (acquisition of subsoil or airspace only) of the Rampion 2 Wind Farm Order [20XX], which excludes the acquisition of subsoil or airspace only from this Schedule.”

(15) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 30 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order.

Modification of the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017

29.—(1) Schedule 1 to the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017 is modified as follows.

(2) In paragraph (1) of Form 1, after “from the date on which the service of notices required by section 6 of the Act is completed”, insert—

“(1A) The [insert land or rights or both] described in Part [insert number] of the Schedule hereto as being for the benefit of third parties and more particularly delineated on the plan annexed hereto vests in the third parties in question as from the end of the period of [insert period of three months or longer] from the date on which the service of notices requires by section 6 of the Act is complete.”

(3) References to Form 2 to “in themselves” is substituted with “in themselves and any identified third parties”.

(4) In paragraph (b) of the notes on use of Form 2—

(a) after “Insert the name of the authority” insert “and where the context requires insert a reference to third parties”; and

(b) omit “Thereafter rely on that definition wherever “b” appears in the text.”.

(a) Section 5A was inserted by Section 182(2) of the Housing and Planning Act 2016 (c. 22).

(b) Section 5B was inserted by Section 202(2) of the Housing and Planning Act 2016 (c. 22)/

Modification of Part 1 of the 1965 Act

30.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge)(a)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act, the seven year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily or take land temporarily) of the Rampion 2 Offshore Wind Farm Order 20xx”.

(3) In section 11A (powers of entry: further notice of entry)(b)—

- (a) in subsection (1)(a), after “land” insert “under that provision”; and
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 24 (time limit for exercise of authority to acquire land compulsorily or take land temporarily) of the Rampion 2 Offshore Wind Farm Order 20xx”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

- (a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 31(3) (acquisition of subsoil or airspace only) of the Rampion 2 Offshore Wind Farm Order 20xx, which excludes the acquisition of subsoil or airspace only from this Schedule”; and

- (b) after paragraph 29 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 18 (protective work to buildings), article 33 (temporary use of land for carrying out the authorised development) or article 34 (temporary use of land for maintaining the authorised development) of the Rampion 2 Offshore Wind Farm Order 20xx.”

Acquisition of subsoil or airspace only

31.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or the airspace over of the land referred to in article 23(1) (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over land under sub-paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under sub-paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by article 30 (modification of Part 1 of the 1965 Act);
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A) (reference of objection to Upper Tribunal: general) of the Town and Country Planning Act 1990.

(4) Sub-paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

(a) 1965 c. 56. Section 4(A) was inserted by Section 202(1) of the Housing and Planning Act 2016 (c. 22).

(b) 1965 c. 56. Section 11A was inserted by Section 186(3) of the Housing and planning Act 2016 (c. 22).

Rights under or over streets

32.—(1) The undertaker may enter on and appropriate so much of the subsoil of or air-space over any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to sub-paragraph (3), the undertaker may exercise any power conferred by sub-paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Sub-paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to sub-paragraph (5), any person who is an owner or occupier of land appropriated under sub-paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under sub-paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing of cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised project

33.—(1) The undertaker may, in connection with the carrying out of the authorised project (but subject to article 24 (time limit for the exercise of authority to acquire land compulsorily or to take land temporarily))—

(a) enter on and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and
- (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights or the imposition of covenants) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

- (b) remove any buildings, agricultural plant and apparatus, drain, structure, apparatus, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site or construction compound (including for the purposes of duct and cable preparation and stringing out) with and for the passage of persons or vehicles (with or without materials, plant and machinery) in connection with the use of the working site or construction compound in connection with the authorised project;
- (e) construct any new road surface or other improvements to any street specified in Schedule 2 (streets subject to street works);
- (f) construct any ground strengthening works to facilitate construction of the authorised development
- (g) construct any works on that land as are mentioned in Part 1 of Schedule 1 (authorised development) and Part 2 of Schedule 1 (ancillary works) on that land; and
- (h) carry out mitigation works required pursuant to the requirements in Part 3 of Schedule 1 (requirements) or any other mitigation works on that land.

(2) The power conferred under sub-paragraph (1)(a)(ii) does not apply to the Order land shown numbered 34/29 and 34/30 on the land plans.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker is not required to serve notice under sub-paragraph (2) where the undertaker has identified a potential risk to the safety of any of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under sub-paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(5) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in sub-paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 9; or
- (b) in the case of land specified in sub-paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the part of the authorised project for which temporary possession of the land was taken,

unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace any buildings, agricultural plant and apparatus, drain, structure, apparatus, fences, debris and vegetation removed under this article;
- (b) restore the land on which any permanent works have been constructed under sub-paragraph (1)(f) or (1)(g);
- (c) remove statutory undertakers' apparatus or connections to such apparatus or any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised project; or
- (d) restore the land on which any works have been carried out under sub-paragraph (1)(h).

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(8) Any dispute as to a person's entitlement to compensation under sub-paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Any dispute as to the satisfactory removal of temporary works and restoration of land under sub-paragraph (5) does not prevent the undertaker from giving up possession of the land.

(10) Subject to article 54 (no double recovery) nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under sub-paragraph (6).

(11) The undertaker may not compulsorily acquire under this Order the land referred to in sub-paragraph (1)(a)(i).

(12) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(13) Section 13(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(14) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in sub-paragraph (1).

(a) 1965 c. 56. Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals Courts and Enforcement Act 2007 (c. 15).

Temporary use of land for maintaining the authorised project

34.—(1) Subject to sub-paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised project; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Sub-paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Unless sub-paragraph (4) applies, the undertaker must serve notice of the intended entry on the owners and occupiers of the land not less than 28 days before entering on and taking temporary possession of land under this article.

(4) The undertaker is not required to serve notice under sub-paragraph (3) where the undertaker has identified a potential risk to the safety of any of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under sub-paragraph (1) subject to giving such notice (if any) as is reasonably practical in the circumstances.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(8) Any dispute as to a person's entitlement to compensation under sub-paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Subject to article 54 (no double recovery) nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from execution of any works, other than loss or damage for which compensation is payable under sub-paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(12) In this article “the maintenance period”, in relation to any part of the authorised, means—

- (a) where the authorised development consists of the maintenance of any tree or shrub a period of 10 years beginning with the date on which that tree or shrub is first planted;
- (b) in relation to any other part of the authorised project the period of five years beginning with the date on which the authorised project is brought into commercial operation; and
- (c) any period falling between the date at which temporary possession is no longer permitted under article 33 and the date on which the authorised project is brought in to commercial operation.

Compulsory acquisition of land – incorporation of the mineral code

35. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 (minerals) are incorporated in this Order subject to the modifications that—

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for “undertaking” substitute “authorised project”; and
- (c) for “compulsory purchase order” substitute “this Order”.

Statutory undertakers

36. Subject to the provisions of Schedule 10 (protective provisions) article 25 (compulsory acquisition of rights and imposition of restrictive covenants) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the Order land; and
- (b) extinguish the rights of, or restrictions for the benefit of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Apparatus and rights of statutory undertakers in stopped up streets

37.—(1) Where a street is closed, altered, diverted or restricted under article 11 (temporary closure of streets), any statutory utility whose apparatus is under, in, on over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(2) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the closure of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(3) If in the course of the execution of relocation works under sub-paragraph (1)—

- (a) apparatus of a better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of sub-paragraph (3) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of sub-paragraph (2) (and having regard, where relevant, to sub paragraph (3)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as

to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) In this article—

“relocation works” means work executed, or apparatus provided, under sub-paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) (interpretation) of Chapter 1 of the 2003 Act (a).

Recovery of costs of new connections

38.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 36 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Sub-paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 36, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 37 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this paragraph—

- (a) “public communications provider” has the same meaning as in section 151(1) of the 2003 Act 2003(b); and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

Special Category Land

39.—(1) On the exercise by the undertaker of the relevant Order powers to acquire rights or impose restrictive covenants over the special category land so much of the special category land as is required for the purposes of the exercise by the undertaker of those rights or enforcement of those restrictive covenants is discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of the relevant Order powers.

(2) In this article—

- (a) “the relevant Order powers” means powers exercisable over the special category land by the undertaker under article 25 (compulsory acquisition of rights and imposition of restrictive covenants); and
- (b) “the special category land” means the land identified as forming part of a common, open space, or fuel or field allotment in the book of reference and on the special category land plans.

PART 6

OPERATIONS

Operation of generating station

40.—(1) The undertaker is hereby authorised to operate the generating station comprised in the authorised project.

(a) 2003 c. 21. There are amendments to section 151 which are not relevant to this Order.
(b) 2003 c. 21. There are amendments to Section 151 which are not relevant to this Order.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Deemed marine licences under the 2009 Act

41. The marine licences set out in Schedules 11 (deemed marine licence under the 2009 Act – generation assets) and 12 (deemed marine licence under the 2009 Act – transmission assets) are deemed to have been granted to the undertaker under Part 4 (marine licensing) of the 2009 Act for the licensed marine activities and subject to the conditions set out in each Part 2 of that Schedule.

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

42.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

43. Development consent granted by this Order is treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land).

Felling or lopping of trees and removal of hedgerows

44.—(1) Subject to article 45 (trees subject to tree preservation orders) the undertaker may fell or lop or cut back the roots of any tree or shrub within or overhanging land within the Order limits or near any part of the authorised project if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with onshore site preparation works, the construction, maintenance or operation of the authorised project or its decommissioning or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by sub-paragraph (1), the undertaker must not do any unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under sub-paragraph (2), or as to the amount of compensation, must be determined under Part 1(determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purpose of the authorised project—

- (a) subject to sub-paragraph (2) above, remove any hedgerows within the Order limits and specified in Schedule 13, Part 1 (removal of hedgerows) that may be required for the purposes of carrying out the authorised project; and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 13, Part 2 (removal of important hedgerows).

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerows Regulations 1997^(a).

Trees subject to tree preservation orders

45.—(1) Subject to sub-paragraph (2), the undertaker must not fell or lop or cut back the roots of any tree which is the subject of a tree preservation order.

(2) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order whensoever made or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with onshore site preparation works the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project or its decommissioning.

(3) In carrying out any activity authorised by sub-paragraph (2)—

- (a) the undertaker must not cause unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(4) The authority given by sub-paragraph (2) constitutes a deemed consent under the relevant tree preservation order.

(5) Any dispute as to a person’s entitlement to compensation under sub-paragraph (3), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Abatement of works abandoned or decayed

46. Where Work Nos 1 to 6 or all of them or any part of them, is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, by notice in writing require the undertaker at its own expense either to repair, make safe and restore one or any of those Works, or any relevant part of them, or to remove them and, without prejudice to any notice served under section 105(2) (Decommissioning programmes) of the 2004 Act^(b) restore the site to a safe and proper condition, to such an extent and within such limits as may be specified in the notice.

Procedure in relation to certain approvals etc.

47. Schedule 14 (procedure for discharge of certain approvals) has effect in relation to all agreements or approvals granted, refused or withheld in relation to the requirements in Part 3 of Schedule 1 (requirements).

Arbitration

48.—(1) Subject to article 49 (saving provisions for Trinity House) any dispute or difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules at Schedule 15 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) For the avoidance of doubt, any matter for which the consent or approval of the Secretary of State or the MMO is required under any provision of this Order is not to be subject to arbitration.

^(a) S.I. 1997/1160.

^(b) Section 105(2) was substituted by Section 69(3) of the Energy Act 2008 (c. 32).

Saving provisions for Trinity House

49. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown rights

50.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary) belonging to—

- (a) His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Sub-paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under sub-paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Certification of plans and documents, etc.

51.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the documents listed in Schedule 16 (documents to be certified) for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) Where a plan or document certified under sub-paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made,

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

Protective provisions

52. Schedule 10 (Protection Provisions) has effect.

Funding

53.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in sub-paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee, the form and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land pursuant to the provisions referred to in sub-paragraph (2); or
- (b) an alternative form of security and the form amount of that security for that purpose approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land pursuant to the provisions referred to in sub-paragraph (2).

(2) The provisions are—

- (a) article 23 (compulsory acquisition of land);
- (b) article 25 (compulsory acquisition of rights and imposition of restrictive covenants);
- (c) article 26 (private rights over land);
- (d) article 27 (power to override easements and other rights);
- (e) article 31 (acquisition of subsoil or airspace only);
- (f) article 32 (rights under or over streets);
- (g) article 33 (temporary use of land for carrying out the authorised project);
- (h) article 34 (temporary use of land for maintaining the authorised project); and
- (i) article 36 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

No double recovery

54. Compensation will not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law or under two or more different provisions of this Order.

Disregard of certain improvements, etc

55.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised project was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised project, directly or indirectly concerned.

Set-off for enhancement in value of retained land

56.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 25 (compulsory acquisition of rights and imposition of restrictive covenants), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

Service of notices

57.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to sub-paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978^(a) (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under sub-paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with sub-paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Inconsistent planning permissions

58.—(1) As from the date on which the authorised project is commenced any conditions of a planning permission granted pursuant to Part 3 (Control over Development) of the 1990 Act (whether express or otherwise) which relate to land within the Order limits or land adjacent to the Order limits cease to have effect to the extent they are inconsistent with the authorised project or with anything done or approved under the requirements in Part 3 of Schedule 1 (requirements).

(a) 1978 c. 30.

(2) As from the date of this Order where planning permission (whether express or otherwise) is granted (whether prior to the date of this Order or after) pursuant to Part 3 of the 1990 Act in respect of land within the Order limits for—

- (a) development which is consistent with the authorised development save that its impact has not been assessed in the environmental statement and assessment has been carried out in accordance with the 2017 Regulations or the Town and Country Planning (Environmental Impact Assessment) Regulations 2017(a) prior to the grant of the planning permission;
- (b) for development which is consistent with the authorised development; or
- (c) for development unrelated to the authorised project,

the carrying out of development pursuant to such planning permission is not to operate to prevent the undertaker from carrying out further works for the development of the authorised project pursuant to the terms of this Order and provided that the requirements set out in Part 3 of Schedule 1 (requirements) shall not apply to development carried out pursuant to such planning permission.

(3) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 (offences) or 161 (breach of terms of order granting development consent) of the 2008 Act.

Compensation measures

59.—Schedule 17 (Compensation to protect the coherence of the National Site Network) has effect.

Signed by Authority of the Secretary of State for Energy, Security and Net Zero

Address	<i>Name</i>
Date	Head of [] Department of Energy, Security and Net Zero

(a) S.I. 2017/571.

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED PROJECT

PART 1

THE AUTHORISED DEVELOPMENT

1. A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act which is located in the English Channel approximately 13 kilometres to the south of the Sussex coast, comprising works to be carried out in the areas shown on the offshore works plans and onshore works plans—

Work No. 1—

an offshore wind turbine generating station which is to have a gross electrical output of over 100 megawatts and must comprise no more than 90 wind turbine generators, with each wind turbine fixed to the seabed by either monopile foundation or multileg foundation and including a connection to the subsea cable circuits comprising Work No. 2(a) or 2(b).

Work No. 2—

- (a) a network of subsea cable circuits between the wind turbine generators comprising Work No. 1;
- (b) a network of subsea cable circuits between the wind turbine generators comprising Work No. 1 and the offshore substations comprising Work No. 3(a) including one or more cable crossings; and
- (c) connections into the offshore substations comprising Work No. 3(a).

Work No. 3—

- (a) up to three offshore substations each fixed to the seabed by monopile foundation, or multileg foundation and including connection to the cable circuits comprising Work No. 2(b), cable circuits comprising Work No. 3(b) and cable circuits comprising Work No. 4; and
- (b) up to two offshore subsea cable circuits in total each connecting one offshore substation to another,

and associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising—

Work No. 4—

up to four cable circuits in total between and connecting one or more of the offshore substations comprising Work No. 3(a) and the cable circuits comprising Work No. 5 laid on or beneath the seabed within the offshore Order limits seaward of MLWS.

Work No. 5—

- (a) up to four temporary horizontal directional drilling exit pits located seaward of MLWS; and
- (b) up to four cable circuits and associated ducts connecting the cable circuits comprising Work No. 4 and the cable circuits comprising Work No. 6 laid on or beneath the seabed or in ducts laid on or beneath the seabed within the offshore Order limits.

In the intertidal area

Work No. 6—

landfall connection works comprising up to four cable circuits and associated ducts laid underground by horizontal directional drilling within the Order limits seaward of MHWS and landward of MLWS connecting Work No. 5 and Work No. 7.

In the district of Arun, in the county of West Sussex

Work No. 7—

onshore connection works consisting of up to four cable circuits and associated cable ducts laid underground by horizontal directional drilling between and connecting Work No. 6 and Work No. 8.

Work No. 8—

onshore connection works at landfall consisting of—

- (a) up to 4 horizontal directional drilling launch and exit pits and associated cable ducts;
- (b) up to 4 transition joint bays; and
- (c) up to four cable circuits and associated cable ducts laid underground by open cut trenching, horizontal directional drilling, or other trenchless technology connecting Work No. 7 to Work No. 9.

In the districts of Arun, Horsham and Mid Sussex in the county of West Sussex, and within the South Downs National Park

Work No. 9—

onshore connection works consisting of—

- (a) up to four cable circuits and associated cable ducts laid underground either by open cut trenching, horizontal directional drilling or other trenchless technology;
- (b) horizontal directional drilling launch and exit pits and associated cable ducts or launch and exit pits associated with other trenchless technologies;
- (c) joint bays;
- (d) temporary construction consolidation sites, construction of a haul road and accesses;
- (e) installation of new land drainage infrastructure and modification of existing land drainage; and
- (f) the provision of operational access.

Work No. 10—

temporary construction compounds.

Work No. 11—

temporary soil storage area.

Work No. 12—

non-intrusive works for duct and cable installation preparation and stringing out.

Work No. 13—

temporary construction accesses including creation of visibility splays and vegetation clearance.

Work No. 14—

construction and operational accesses including creation of visibility splays and vegetation clearance.

Work No.15—

operational accesses including creation of visibility splays and vegetation clearance.

In the district of Horsham, in the county of West Sussex—

Work No. 16—

onshore substation and associated construction works including—

- (a) civil works to allow the installation of electrical equipment;
- (b) installation and commissioning of high voltage electrical equipment including switch gears and circuit breakers, transformers, reactive compensation equipment, high voltage cables and bus bars to connect electrical equipment;

- (c) construction of associated control buildings for the operation of the substation;
- (d) accesses connecting to Work No. 18;
- (e) surface water and drainage management measures;
- (f) boundary treatment works; and
- (g) landscaping.

Work No. 17—

environmental works to mitigate the impact of the substations comprising each of Work No. 16 and Work 20.

Work No. 18—

construction and operational access including drainage connecting Work No. 16 to the A272 including a new access junction.

In the districts of Mid Sussex and Horsham, in the county of West Sussex—

Work No. 19—

onshore cable installation and associated works connecting Work No. 16 to the extended National Grid substation at Bolney comprising Work No. 20 consisting of—

- (a) up to two cable circuits and associated cable ducts laid underground either by open cut trenching, horizontal directional drilling or other trenchless technology;
- (b) horizontal directional drilling launch and exit pits or launch and exit pits associated with other trenchless technologies and associated cable ducts;
- (c) transition joint bays;
- (d) temporary construction consolidation sites, construction of a haul road and accesses; and
- (e) installation of a new land drainage infrastructure and modification of existing land drainage and operational access.

Work No. 20—

an extension to the existing National Grid substation at Bolney for the connection of the cable circuits from the onshore substation to the National Grid substation including (but not limited to) cabling, cable sealing ends, circuit breakers, surge arrestors, dis-connectors, instrumentation-transformers, busbars and busbar clamp measuring equipment, other instrumentation and control equipment, relay marshalling rooms and electrical earthing works including associated connection works within the existing National Grid substation.

Further Works

Offshore

In connection with such Work Nos. 1 to 6 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the work assessed by the environmental statement, including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures;
- (c) vessels carrying out intrusive activities;
- (d) the removal of material from the seabed required for the construction of Work Nos. 1 to 5 and the disposal of inert material of natural origin within the Order limits produced during construction drilling, seabed preparation for foundation works, cable installation preparation such as sandwave clearance, boulder clearance, pre-trenching, horizontal directional drill arisings and excavation of exit pits;
- (e) removal of static fishing equipment; and
- (f) disposal of drill arisings in connection with any foundation drilling within the offshore Order limits,

and

Onshore

in connection with such Work Nos. 6 to 20 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- (a) works to secure vehicular and/or pedestrian means of access including the creation of new tracks, footpaths, and/or widening, creation of passing places, upgrades, creation of bellmouths, creation of temporary slip roads and improvements of existing tracks, footpaths and roads, including provision of visibility splays;
- (b) temporary construction access tracks or haul road;
- (c) bunds, embankments, swales, landscaping, fencing and boundary treatments and other means of enclosure;
- (d) vegetation clearance;
- (e) habitat creation and restoration;
- (f) joint bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable marker, tiles and tape and other works associated with cable laying;
- (g) works for the provision of apparatus including cabling, water and electricity supply works, foul drainage provision, surface water management systems and culverting including drainage mitigation works;
- (h) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (i) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (j) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised project;
- (k) works for the benefit or protection of land affected by the authorised development;
- (l) working sites in connection with the construction of the authorised development, construction lay down areas and compounds, storage compounds and their restoration;
- (m) car parking areas, welfare facilities, temporary offices and workshops;
- (n) spoil (including arisings from Work No. 6) and equipment storage;
- (o) works of restoration;
- (p) bowzers septic tanks generators and standby generators;
- (q) ramps and temporary bridges;
- (r) temporary lighting;
- (s) works for the provision of apparatus including cabling water and electricity supply networks; and
- (t) archaeological works,

and in each case such other works, apparatus, plant and machinery of whatever nature as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development.

2. The grid coordinates for that part of the authorised project which is seaward of MHWS are specified below and more particularly shown on the offshore Order limits and grid coordinates plan—

Table 1

<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>
1	50° 48' 0.6148"	-000° 32' 46.9538"	64	50° 39' 22.8994"	-000° 11' 0.3078"
2	50° 48' 0.3623"	-000° 32' 46.6888"	65	50° 39' 22.9375"	-000° 11' 0.1216"
3	50° 47' 58.5314"	-000° 32' 44.7664"	66	50° 39' 22.9921"	-000° 10' 59.8545"
4	50° 47' 55.2012"	-000° 32' 41.2701"	67	50° 39' 23.0026"	-000° 10' 59.8032"
5	50° 47' 54.8542"	-000° 32' 41.2745"	68	50° 39' 23.0301"	-000° 10' 59.6688"
6	50° 47' 47.1541"	-000° 32' 41.3703"	69	50° 39' 23.0417"	-000° 10' 59.6121"
7	50° 47' 24.0826"	-000° 32' 41.6574"	70	50° 39' 23.0889"	-000° 10' 59.3814"
8	50° 46' 40.6972"	-000° 32' 42.1966"	71	50° 36' 40.5733"	-000° 10' 7.2790"

9	50° 45' 42.5924"	-000° 32' 42.9178"	72	50° 35' 56.8348"	-000° 12' 29.9698"
10	50° 44' 50.3060"	-000° 32' 43.5658"	73	50° 35' 46.1905"	-000° 13' 4.6597"
11	50° 43' 27.9008"	-000° 32' 44.5850"	74	50° 35' 26.4347"	-000° 14' 9.0079"
12	50° 43' 4.3293"	-000° 32' 44.8761"	75	50° 35' 44.1096"	-000° 20' 10.6548"
13	50° 42' 28.3486"	-000° 32' 45.3201"	76	50° 36' 25.6547"	-000° 21' 2.8378"
14	50° 42' 25.1670"	-000° 32' 45.4370"	77	50° 36' 27.9442"	-000° 21' 5.7145"
15	50° 42' 22.6856"	-000° 32' 42.9705"	78	50° 36' 33.7315"	-000° 21' 12.9866"
16	50° 41' 28.6123"	-000° 31' 57.7034"	79	50° 36' 36.0255"	-000° 21' 15.9940"
17	50° 41' 12.8834"	-000° 31' 44.5421"	80	50° 36' 42.3252"	-000° 21' 24.2532"
18	50° 39' 52.3821"	-000° 30' 37.2248"	81	50° 36' 50.0795"	-000° 21' 34.4205"
19	50° 41' 11.3500"	-000° 21' 55.8599"	82	50° 37' 0.5900"	-000° 21' 48.2036"
20	50° 39' 53.9451"	-000° 21' 30.9561"	83	50° 37' 2.6269"	-000° 21' 50.8749"
21	50° 38' 43.2945"	-000° 21' 8.2445"	84	50° 37' 26.1929"	-000° 22' 21.7880"
22	50° 38' 11.9503"	-000° 20' 58.1743"	85	50° 37' 27.1480"	-000° 22' 23.0411"
23	50° 37' 42.3197"	-000° 20' 48.6579"	86	50° 36' 38.8171"	-000° 27' 24.4229"
24	50° 37' 32.8206"	-000° 20' 45.6028"	87	50° 36' 16.5551"	-000° 29' 46.1531"
25	50° 37' 32.7858"	-000° 20' 45.5916"	88	50° 36' 12.3786"	-000° 30' 12.7043"
26	50° 37' 32.7633"	-000° 20' 45.5843"	89	50° 35' 33.2206"	-000° 34' 21.0588"
27	50° 37' 22.7987"	-000° 20' 42.3409"	90	50° 35' 29.7384"	-000° 34' 43.2949"
28	50° 38' 31.7775"	-000° 16' 26.9705"	91	50° 35' 11.5476"	-000° 36' 40.5405"
29	50° 38' 13.3226"	-000° 16' 17.0707"	92	50° 35' 8.6938"	-000° 36' 58.9128"
30	50° 38' 41.3993"	-000° 14' 22.9538"	93	50° 35' 8.5860"	-000° 37' 35.2466"
31	50° 39' 19.2087"	-000° 11' 18.3535"	94	50° 35' 15.1952"	-000° 37' 36.0920"
32	50° 39' 19.3373"	-000° 11' 17.7245"	95	50° 35' 17.9985"	-000° 37' 36.4578"
33	50° 39' 19.5025"	-000° 11' 16.9170"	96	50° 35' 18.0869"	-000° 37' 36.4693"
34	50° 39' 19.6186"	-000° 11' 16.3492"	97	50° 35' 25.0537"	-000° 37' 37.3783"
35	50° 39' 19.6908"	-000° 11' 15.9965"	98	50° 35' 31.1113"	-000° 37' 38.1688"
36	50° 39' 19.7648"	-000° 11' 15.6344"	99	50° 35' 52.0407"	-000° 37' 40.9002"
37	50° 39' 20.4130"	-000° 11' 12.4655"	100	50° 36' 22.3039"	-000° 37' 44.8508"
38	50° 39' 20.4164"	-000° 11' 12.4490"	101	50° 36' 24.7136"	-000° 37' 45.1655"
39	50° 39' 20.6912"	-000° 11' 11.1054"	102	50° 36' 36.3272"	-000° 37' 46.6819"
40	50° 39' 20.6985"	-000° 11' 11.0695"	103	50° 37' 8.9157"	-000° 37' 51.3889"
41	50° 39' 20.7558"	-000° 11' 10.7896"	104	50° 37' 14.4423"	-000° 37' 52.1326"
42	50° 39' 20.7809"	-000° 11' 10.6668"	105	50° 37' 26.2596"	-000° 37' 53.7231"
43	50° 39' 20.8160"	-000° 11' 10.4952"	106	50° 37' 33.2783"	-000° 37' 54.6678"
44	50° 39' 20.8413"	-000° 11' 10.3711"	107	50° 37' 47.0466"	-000° 37' 56.5213"
45	50° 39' 20.8647"	-000° 11' 10.2572"	108	50° 37' 52.4650"	-000° 37' 57.2507"
46	50° 39' 20.8985"	-000° 11' 10.0916"	109	50° 37' 55.7250"	-000° 37' 57.5509"
47	50° 39' 20.9320"	-000° 11' 9.9280"	110	50° 39' 1.7938"	-000° 36' 8.7262"
48	50° 39' 20.9471"	-000° 11' 9.8539"	111	50° 39' 24.3939"	-000° 33' 40.8674"
49	50° 39' 20.9846"	-000° 11' 9.6706"	112	50° 40' 16.3645"	-000° 34' 24.3839"
50	50° 39' 21.0187"	-000° 11' 9.5038"	113	50° 41' 39.4711"	-000° 35' 34.0336"
51	50° 39' 21.0425"	-000° 11' 9.3875"	114	50° 42' 42.0736"	-000° 36' 26.5498"
52	50° 39' 21.0907"	-000° 11' 9.1519"	115	50° 42' 54.3446"	-000° 36' 23.8715"
53	50° 39' 21.1078"	-000° 11' 9.0682"	116	50° 43' 29.5066"	-000° 36' 16.1947"
54	50° 39' 21.1552"	-000° 11' 8.8368"	117	50° 44' 36.7196"	-000° 36' 1.5105"
55	50° 39' 21.1689"	-000° 11' 8.7697"	118	50° 45' 10.4373"	-000° 35' 54.1393"
56	50° 39' 21.1691"	-000° 11' 8.7686"	119	50° 46' 18.6039"	-000° 35' 39.2272"
57	50° 39' 21.2393"	-000° 11' 8.4254"	120	50° 46' 50.5124"	-000° 35' 32.2424"
58	50° 39' 21.2579"	-000° 11' 8.3344"	121	50° 47' 32.2233"	-000° 35' 23.1074"

59	50° 39' 21.2943"	-000° 11' 8.1562"	122	50° 47' 34.7138"	-000° 35' 22.5618"
60	50° 39' 21.3304"	-000° 11' 7.9801"	123	50° 47' 36.2526"	-000° 35' 22.2247"
61	50° 39' 21.3412"	-000° 11' 7.9272"	124	50° 47' 37.5395"	-000° 35' 21.9428"
62	50° 39' 22.1787"	-000° 11' 3.8321"	125	50° 47' 37.7729"	-000° 35' 21.8917"
63	50° 39' 22.8501"	-000° 11' 0.5488"	126	50° 47' 38.9597"	-000° 35' 21.6317"

3. The grid coordinates for that part of the offshore Order limits where those parts of the authorised project comprising Work Nos. 1, 2(c) and 3(a) may be carried out as shown on the offshore works plans are specified below—

Table 2

<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>
1	50° 39' 1.7938"	-000° 36' 8.7262"	71	50° 39' 27.3702"	-000° 30' 22.4457"
2	50° 39' 24.3939"	-000° 33' 40.8674"	72	50° 39' 27.5636"	-000° 30' 20.9233"
3	50° 39' 38.5128"	-000° 32' 8.3008"	73	50° 39' 27.7675"	-000° 30' 19.3961"
4	50° 39' 38.0150"	-000° 32' 7.9507"	74	50° 39' 27.9818"	-000° 30' 17.8647"
5	50° 39' 37.5445"	-000° 32' 7.5894"	75	50° 39' 28.2064"	-000° 30' 16.3295"
6	50° 39' 37.0814"	-000° 32' 7.2019"	76	50° 39' 28.4413"	-000° 30' 14.7911"
7	50° 39' 36.6259"	-000° 32' 6.7883"	77	50° 39' 28.6863"	-000° 30' 13.2497"
8	50° 39' 36.1781"	-000° 32' 6.3487"	78	50° 39' 28.9415"	-000° 30' 11.7061"
9	50° 39' 35.7382"	-000° 32' 5.8833"	79	50° 39' 29.2067"	-000° 30' 10.1605"
10	50° 39' 35.3062"	-000° 32' 5.3922"	80	50° 39' 29.4819"	-000° 30' 8.6135"
11	50° 39' 34.8823"	-000° 32' 4.8755"	81	50° 39' 29.7669"	-000° 30' 7.0655"
12	50° 39' 34.4667"	-000° 32' 4.3334"	82	50° 39' 30.0618"	-000° 30' 5.5171"
13	50° 39' 34.0594"	-000° 32' 3.7661"	83	50° 39' 30.3663"	-000° 30' 3.9686"
14	50° 39' 33.6606"	-000° 32' 3.1737"	84	50° 39' 30.6804"	-000° 30' 2.4206"
15	50° 39' 33.2705"	-000° 32' 2.5565"	85	50° 39' 31.0041"	-000° 30' 0.8735"
16	50° 39' 32.8890"	-000° 32' 1.9146"	86	50° 39' 31.3371"	-000° 29' 59.3278"
17	50° 39' 32.5164"	-000° 32' 1.2482"	87	50° 39' 31.6795"	-000° 29' 57.7840"
18	50° 39' 32.1528"	-000° 32' 0.5575"	88	50° 39' 32.0310"	-000° 29' 56.2425"
19	50° 39' 31.7982"	-000° 31' 59.8427"	89	50° 39' 32.3917"	-000° 29' 54.7039"
20	50° 39' 31.4528"	-000° 31' 59.1040"	90	50° 39' 32.7613"	-000° 29' 53.1685"
21	50° 39' 31.1167"	-000° 31' 58.3418"	91	50° 39' 33.1398"	-000° 29' 51.6369"
22	50° 39' 30.7900"	-000° 31' 57.5561"	92	50° 39' 33.5271"	-000° 29' 50.1095"
23	50° 39' 30.4727"	-000° 31' 56.7473"	93	50° 39' 33.9230"	-000° 29' 48.5867"
24	50° 39' 30.1651"	-000° 31' 55.9155"	94	50° 39' 34.3275"	-000° 29' 47.0691"
25	50° 39' 29.8671"	-000° 31' 55.0611"	95	50° 39' 34.7403"	-000° 29' 45.5571"
26	50° 39' 29.5788"	-000° 31' 54.1843"	96	50° 39' 35.1614"	-000° 29' 44.0512"
27	50° 39' 29.3005"	-000° 31' 53.2853"	97	50° 39' 35.5907"	-000° 29' 42.5518"
28	50° 39' 29.0320"	-000° 31' 52.3645"	98	50° 39' 36.0279"	-000° 29' 41.0593"
29	50° 39' 28.7736"	-000° 31' 51.4221"	99	50° 39' 36.4731"	-000° 29' 39.5743"
30	50° 39' 28.5253"	-000° 31' 50.4584"	100	50° 39' 36.9260"	-000° 29' 38.0972"
31	50° 39' 28.2871"	-000° 31' 49.4737"	101	50° 39' 37.3865"	-000° 29' 36.6284"
32	50° 39' 28.0592"	-000° 31' 48.4683"	102	50° 39' 37.8544"	-000° 29' 35.1684"
33	50° 39' 27.8416"	-000° 31' 47.4425"	103	50° 39' 38.3297"	-000° 29' 33.7176"
34	50° 39' 27.6344"	-000° 31' 46.3966"	104	50° 40' 22.3750"	-000° 27' 19.7685"
35	50° 39' 27.4376"	-000° 31' 45.3309"	105	50° 40' 53.6018"	-000° 23' 53.4563"
36	50° 39' 27.2513"	-000° 31' 44.2459"	106	50° 37' 23.6536"	-000° 22' 44.8831"
37	50° 39' 27.0756"	-000° 31' 43.1417"	107	50° 36' 38.8171"	-000° 27' 24.4229"
38	50° 39' 26.9105"	-000° 31' 42.0187"	108	50° 36' 16.5551"	-000° 29' 46.1531"
39	50° 39' 26.7561"	-000° 31' 40.8773"	109	50° 36' 12.3786"	-000° 30' 12.7043"
40	50° 39' 26.6123"	-000° 31' 39.7178"	110	50° 35' 33.2206"	-000° 34' 21.0588"

41	50° 39' 26.4793"	-000° 31' 38.5406"	111	50° 35' 29.7384"	-000° 34' 43.2949"
42	50° 39' 26.3572"	-000° 31' 37.3460"	112	50° 35' 11.5476"	-000° 36' 40.5405"
43	50° 39' 26.2458"	-000° 31' 36.1344"	113	50° 35' 8.6938"	-000° 36' 58.9128"
44	50° 39' 26.1453"	-000° 31' 34.9062"	114	50° 35' 8.5860"	-000° 37' 35.2466"
45	50° 39' 26.0557"	-000° 31' 33.6617"	115	50° 35' 15.1952"	-000° 37' 36.0920"
46	50° 39' 25.9770"	-000° 31' 32.4013"	116	50° 35' 17.9985"	-000° 37' 36.4578"
47	50° 39' 25.9093"	-000° 31' 31.1254"	117	50° 35' 18.0869"	-000° 37' 36.4693"
48	50° 39' 25.8526"	-000° 31' 29.8344"	118	50° 35' 25.0537"	-000° 37' 37.3783"
49	50° 39' 25.8068"	-000° 31' 28.5286"	119	50° 35' 31.1113"	-000° 37' 38.1688"
50	50° 39' 25.7720"	-000° 31' 27.2086"	120	50° 35' 52.0407"	-000° 37' 40.9002"
51	50° 39' 25.7482"	-000° 31' 25.8746"	121	50° 36' 22.3039"	-000° 37' 44.8508"
52	50° 39' 25.7355"	-000° 31' 24.5271"	122	50° 36' 24.7136"	-000° 37' 45.1655"
53	50° 39' 25.7337"	-000° 31' 23.1665"	123	50° 36' 36.3272"	-000° 37' 46.6819"
54	50° 39' 25.7265"	-000° 30' 47.1665"	124	50° 37' 8.9157"	-000° 37' 51.3889"
55	50° 39' 25.7358"	-000° 30' 45.7932"	125	50° 37' 14.4423"	-000° 37' 52.1326"
56	50° 39' 25.7561"	-000° 30' 44.4076"	126	50° 37' 26.2596"	-000° 37' 53.7231"
57	50° 39' 25.7874"	-000° 30' 43.0102"	127	50° 37' 33.2783"	-000° 37' 54.6678"
58	50° 39' 25.8297"	-000° 30' 41.6014"	128	50° 37' 47.0466"	-000° 37' 56.5213"
59	50° 39' 25.8830"	-000° 30' 40.1815"	129	50° 37' 52.4650"	-000° 37' 57.2507"
60	50° 39' 25.9472"	-000° 30' 38.7511"	130	50° 37' 55.7250"	-000° 37' 57.5509"
61	50° 39' 26.0225"	-000° 30' 37.3106"	131	50° 39' 1.7938"	-000° 36' 8.7262"
62	50° 39' 26.1086"	-000° 30' 35.8603"	132	50° 35' 26.4347"	-000° 14' 9.0079"
63	50° 39' 26.2056"	-000° 30' 34.4008"	133	50° 35' 43.9510"	-000° 20' 7.3806"
64	50° 39' 26.3136"	-000° 30' 32.9325"	134	50° 36' 55.0393"	-000° 20' 30.4937"
65	50° 39' 26.4323"	-000° 30' 31.4559"	135	50° 38' 29.1370"	-000° 10' 42.0738"
66	50° 39' 26.5619"	-000° 30' 29.9713"	136	50° 36' 40.5733"	-000° 10' 7.2790"
67	50° 39' 26.7022"	-000° 30' 28.4793"	137	50° 35' 56.8348"	-000° 12' 29.9698"
68	50° 39' 26.8532"	-000° 30' 26.9803"	138	50° 35' 46.1905"	-000° 13' 4.6597"
69	50° 39' 27.0149"	-000° 30' 25.4747"	139	50° 35' 26.4347"	-000° 14' 9.0079"
70	50° 39' 27.1873"	-000° 30' 23.9630"			

4. The grid coordinates for that part of the offshore Order limits where the parts of the authorised project comprising Work No. 2(a), 2(b) and Work No. 3(b) may be carried out as shown on the offshore works plans are specified below—

Table 3

<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>
1	50° 39' 52.3821"	-000° 30' 37.2248"	48	50° 39' 22.9375"	-000° 11' 0.1216"
2	50° 41' 11.3500"	-000° 21' 55.8599"	49	50° 39' 22.9921"	-000° 10' 59.8545"
3	50° 39' 53.9451"	-000° 21' 30.9561"	50	50° 39' 23.0026"	-000° 10' 59.8032"
4	50° 38' 43.2945"	-000° 21' 8.2445"	51	50° 39' 23.0301"	-000° 10' 59.6688"
5	50° 38' 11.9503"	-000° 20' 58.1743"	52	50° 39' 23.0417"	-000° 10' 59.6121"
6	50° 37' 42.3197"	-000° 20' 48.6579"	53	50° 39' 23.0889"	-000° 10' 59.3814"
7	50° 37' 32.8206"	-000° 20' 45.6028"	54	50° 36' 40.5733"	-000° 10' 7.2790"
8	50° 37' 32.7858"	-000° 20' 45.5916"	55	50° 35' 56.8348"	-000° 12' 29.9698"
9	50° 37' 32.7633"	-000° 20' 45.5843"	56	50° 35' 46.1905"	-000° 13' 4.6597"
10	50° 37' 22.7987"	-000° 20' 42.3409"	57	50° 35' 26.4347"	-000° 14' 9.0079"
11	50° 38' 31.7775"	-000° 16' 26.9705"	58	50° 35' 44.1096"	-000° 20' 10.6548"
12	50° 38' 13.3226"	-000° 16' 17.0707"	59	50° 36' 25.6547"	-000° 21' 2.8378"
13	50° 38' 41.3993"	-000° 14' 22.9538"	60	50° 36' 27.9442"	-000° 21' 5.7145"
14	50° 39' 19.2087"	-000° 11' 18.3535"	61	50° 36' 33.7315"	-000° 21' 12.9866"

15	50° 39' 19.3373"	-000° 11' 17.7245"	62	50° 36' 36.0255"	-000° 21' 15.9940"
16	50° 39' 19.5025"	-000° 11' 16.9170"	63	50° 36' 42.3252"	-000° 21' 24.2532"
17	50° 39' 19.6186"	-000° 11' 16.3492"	64	50° 36' 50.0795"	-000° 21' 34.4205"
18	50° 39' 19.6908"	-000° 11' 15.9965"	65	50° 37' 0.5900"	-000° 21' 48.2036"
19	50° 39' 19.7648"	-000° 11' 15.6344"	66	50° 37' 2.6269"	-000° 21' 50.8749"
20	50° 39' 20.4130"	-000° 11' 12.4655"	67	50° 37' 26.1929"	-000° 22' 21.7880"
21	50° 39' 20.4164"	-000° 11' 12.4490"	68	50° 37' 27.1480"	-000° 22' 23.0411"
22	50° 39' 20.6912"	-000° 11' 11.1054"	69	50° 36' 38.8171"	-000° 27' 24.4229"
23	50° 39' 20.6985"	-000° 11' 11.0695"	70	50° 36' 16.5551"	-000° 29' 46.1531"
24	50° 39' 20.7558"	-000° 11' 10.7896"	71	50° 36' 12.3786"	-000° 30' 12.7043"
25	50° 39' 20.7809"	-000° 11' 10.6668"	72	50° 35' 33.2206"	-000° 34' 21.0588"
26	50° 39' 20.8160"	-000° 11' 10.4952"	73	50° 35' 29.7384"	-000° 34' 43.2949"
27	50° 39' 20.8413"	-000° 11' 10.3711"	74	50° 35' 11.5476"	-000° 36' 40.5405"
28	50° 39' 20.8647"	-000° 11' 10.2572"	75	50° 35' 8.6938"	-000° 36' 58.9128"
29	50° 39' 20.8985"	-000° 11' 10.0916"	76	50° 35' 8.5860"	-000° 37' 35.2466"
30	50° 39' 20.9320"	-000° 11' 9.9280"	77	50° 35' 15.1952"	-000° 37' 36.0920"
31	50° 39' 20.9471"	-000° 11' 9.8539"	78	50° 35' 17.9985"	-000° 37' 36.4578"
32	50° 39' 20.9846"	-000° 11' 9.6706"	79	50° 35' 18.0869"	-000° 37' 36.4693"
33	50° 39' 21.0187"	-000° 11' 9.5038"	80	50° 35' 25.0537"	-000° 37' 37.3783"
34	50° 39' 21.0425"	-000° 11' 9.3875"	81	50° 35' 31.1113"	-000° 37' 38.1688"
35	50° 39' 21.0907"	-000° 11' 9.1519"	82	50° 35' 52.0407"	-000° 37' 40.9002"
36	50° 39' 21.1078"	-000° 11' 9.0682"	83	50° 36' 22.3039"	-000° 37' 44.8508"
37	50° 39' 21.1552"	-000° 11' 8.8368"	84	50° 36' 24.7136"	-000° 37' 45.1655"
38	50° 39' 21.1689"	-000° 11' 8.7697"	85	50° 36' 36.3272"	-000° 37' 46.6819"
39	50° 39' 21.1691"	-000° 11' 8.7686"	86	50° 37' 8.9157"	-000° 37' 51.3889"
40	50° 39' 21.2393"	-000° 11' 8.4254"	87	50° 37' 14.4423"	-000° 37' 52.1326"
41	50° 39' 21.2579"	-000° 11' 8.3344"	88	50° 37' 26.2596"	-000° 37' 53.7231"
42	50° 39' 21.2943"	-000° 11' 8.1562"	89	50° 37' 33.2783"	-000° 37' 54.6678"
43	50° 39' 21.3304"	-000° 11' 7.9801"	90	50° 37' 47.0466"	-000° 37' 56.5213"
44	50° 39' 21.3412"	-000° 11' 7.9272"	91	50° 37' 52.4650"	-000° 37' 57.2507"
45	50° 39' 22.1787"	-000° 11' 3.8321"	92	50° 37' 55.7250"	-000° 37' 57.5509"
46	50° 39' 22.8501"	-000° 11' 0.5488"	93	50° 39' 1.7938"	-000° 36' 8.7262"
47	50° 39' 22.8994"	-000° 11' 0.3078"	94	50° 39' 24.3939"	-000° 33' 40.8674"

5. The grid coordinates for that part of the offshore Order limits where that part of the authorised project comprising Work No. 4 may be carried out as shown on the offshore works plans are specified below—

Table 4

<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>
1	50° 46' 49.8007"	-000° 32' 42.0835"	97	50° 37' 8.9157"	-000° 37' 51.3889"
2	50° 46' 40.6972"	-000° 32' 42.1966"	98	50° 37' 14.4423"	-000° 37' 52.1326"
3	50° 45' 42.5924"	-000° 32' 42.9178"	99	50° 37' 26.2596"	-000° 37' 53.7231"
4	50° 44' 50.3060"	-000° 32' 43.5658"	100	50° 37' 33.2783"	-000° 37' 54.6678"
5	50° 43' 27.9008"	-000° 32' 44.5850"	101	50° 37' 47.0466"	-000° 37' 56.5213"
6	50° 43' 4.3293"	-000° 32' 44.8761"	102	50° 37' 52.4650"	-000° 37' 57.2507"
7	50° 42' 28.3486"	-000° 32' 45.3201"	103	50° 37' 55.7250"	-000° 37' 57.5509"
8	50° 42' 25.1670"	-000° 32' 45.4370"	104	50° 39' 1.7938"	-000° 36' 8.7262"
9	50° 42' 22.6856"	-000° 32' 42.9705"	105	50° 39' 24.3939"	-000° 33' 40.8674"
10	50° 41' 28.6123"	-000° 31' 57.7034"	106	50° 40' 16.3645"	-000° 34' 24.3839"
11	50° 41' 12.8834"	-000° 31' 44.5421"	107	50° 41' 39.4711"	-000° 35' 34.0336"
12	50° 39' 52.3821"	-000° 30' 37.2248"	108	50° 42' 42.0736"	-000° 36' 26.5498"

13	50° 41' 11.3500"	-000° 21' 55.8599"	109	50° 42' 54.3446"	-000° 36' 23.8715"
14	50° 39' 53.9451"	-000° 21' 30.9561"	110	50° 43' 29.5066"	-000° 36' 16.1947"
15	50° 38' 43.2945"	-000° 21' 8.2445"	111	50° 44' 36.7196"	-000° 36' 1.5105"
16	50° 38' 11.9503"	-000° 20' 58.1743"	112	50° 45' 10.4373"	-000° 35' 54.1393"
17	50° 37' 42.3197"	-000° 20' 48.6580"	113	50° 46' 18.6039"	-000° 35' 39.2272"
18	50° 37' 32.8206"	-000° 20' 45.6028"	114	50° 46' 31.3325"	-000° 35' 36.4412"
19	50° 37' 32.7858"	-000° 20' 45.5916"	115	50° 46' 30.8906"	-000° 35' 31.1402"
20	50° 37' 32.7633"	-000° 20' 45.5843"	116	50° 46' 30.6142"	-000° 35' 24.4745"
21	50° 37' 22.7988"	-000° 20' 42.3409"	117	50° 46' 30.6147"	-000° 35' 17.7946"
22	50° 38' 31.7775"	-000° 16' 26.9705"	118	50° 46' 30.8922"	-000° 35' 11.1291"
23	50° 38' 13.3227"	-000° 16' 17.0707"	119	50° 46' 31.4453"	-000° 35' 4.5064"
24	50° 38' 41.3993"	-000° 14' 22.9538"	120	50° 46' 32.2718"	-000° 34' 57.9549"
25	50° 39' 19.2087"	-000° 11' 18.3535"	121	50° 46' 33.3681"	-000° 34' 51.5025"
26	50° 39' 19.3373"	-000° 11' 17.7245"	122	50° 46' 34.7296"	-000° 34' 45.1770"
27	50° 39' 19.5025"	-000° 11' 16.9170"	123	50° 46' 35.4901"	-000° 34' 42.2812"
28	50° 39' 19.6186"	-000° 11' 16.3492"	124	50° 46' 35.5228"	-000° 34' 42.0236"
29	50° 39' 19.6908"	-000° 11' 15.9965"	125	50° 46' 35.5994"	-000° 34' 41.2888"
30	50° 39' 19.7648"	-000° 11' 15.6344"	126	50° 46' 35.6054"	-000° 34' 41.2313"
31	50° 39' 20.4130"	-000° 11' 12.4655"	127	50° 46' 35.9055"	-000° 34' 38.5822"
32	50° 39' 20.4164"	-000° 11' 12.4490"	128	50° 46' 36.0094"	-000° 34' 37.7299"
33	50° 39' 20.6912"	-000° 11' 11.1054"	129	50° 46' 36.5355"	-000° 34' 33.8272"
34	50° 39' 20.6985"	-000° 11' 11.0695"	130	50° 46' 37.0004"	-000° 34' 30.8806"
35	50° 39' 20.7558"	-000° 11' 10.7896"	131	50° 46' 37.0010"	-000° 34' 30.8770"
36	50° 39' 20.7809"	-000° 11' 10.6668"	132	50° 46' 37.1267"	-000° 34' 30.0528"
37	50° 39' 20.8160"	-000° 11' 10.4952"	133	50° 46' 37.6810"	-000° 34' 26.8347"
38	50° 39' 20.8414"	-000° 11' 10.3711"	134	50° 46' 37.7138"	-000° 34' 26.5748"
39	50° 39' 20.8647"	-000° 11' 10.2572"	135	50° 46' 38.0846"	-000° 34' 24.1951"
40	50° 39' 20.8985"	-000° 11' 10.0916"	136	50° 46' 38.3829"	-000° 34' 22.3753"
41	50° 39' 20.9320"	-000° 11' 9.9280"	137	50° 46' 38.8484"	-000° 34' 19.6871"
42	50° 39' 20.9471"	-000° 11' 9.8540"	138	50° 46' 38.9607"	-000° 34' 19.0720"
43	50° 39' 20.9846"	-000° 11' 9.6706"	139	50° 46' 39.2202"	-000° 34' 17.6871"
44	50° 39' 21.0187"	-000° 11' 9.5038"	140	50° 46' 40.5811"	-000° 34' 11.3611"
45	50° 39' 21.0425"	-000° 11' 9.3875"	141	50° 46' 41.8814"	-000° 34' 6.3216"
46	50° 39' 21.0907"	-000° 11' 9.1519"	142	50° 46' 42.2559"	-000° 34' 4.9738"
47	50° 39' 21.1078"	-000° 11' 9.0682"	143	50° 46' 42.5759"	-000° 34' 3.8412"
48	50° 39' 21.1552"	-000° 11' 8.8368"	144	50° 46' 42.9023"	-000° 34' 2.7225"
49	50° 39' 21.1689"	-000° 11' 8.7697"	145	50° 46' 43.3239"	-000° 34' 1.3002"
50	50° 39' 21.1691"	-000° 11' 8.7686"	146	50° 46' 44.3721"	-000° 33' 57.9966"
51	50° 39' 21.2393"	-000° 11' 8.4254"	147	50° 46' 44.3810"	-000° 33' 57.9636"
52	50° 39' 21.2579"	-000° 11' 8.3345"	148	50° 46' 45.2637"	-000° 33' 55.0152"
53	50° 39' 21.2944"	-000° 11' 8.1562"	149	50° 46' 45.5808"	-000° 33' 53.9984"
54	50° 39' 21.3304"	-000° 11' 7.9801"	150	50° 46' 46.0305"	-000° 33' 52.5844"
55	50° 39' 21.3412"	-000° 11' 7.9272"	151	50° 46' 46.4507"	-000° 33' 51.2883"
56	50° 39' 22.1787"	-000° 11' 3.8321"	152	50° 46' 46.9907"	-000° 33' 49.6586"
57	50° 39' 22.8501"	-000° 11' 0.5488"	153	50° 46' 47.8546"	-000° 33' 47.2974"
58	50° 39' 22.8994"	-000° 11' 0.3078"	154	50° 46' 48.2437"	-000° 33' 46.1079"
59	50° 39' 22.9375"	-000° 11' 0.1216"	155	50° 46' 49.1345"	-000° 33' 43.6730"
60	50° 39' 22.9921"	-000° 10' 59.8545"	156	50° 46' 49.4912"	-000° 33' 39.3906"
61	50° 39' 23.0026"	-000° 10' 59.8033"	157	50° 46' 50.3164"	-000° 33' 32.8380"
62	50° 39' 23.0301"	-000° 10' 59.6688"	158	50° 46' 51.1191"	-000° 33' 27.9509"

63	50° 39' 23.0417"	-000° 10' 59.6121"	159	50° 46' 51.3096"	-000° 33' 26.8988"
64	50° 39' 23.0889"	-000° 10' 59.3814"	160	50° 46' 51.3391"	-000° 33' 26.6492"
65	50° 36' 40.5733"	-000° 10' 7.2790"	161	50° 46' 51.5789"	-000° 33' 24.7195"
66	50° 35' 56.8348"	-000° 12' 29.9698"	162	50° 46' 51.6477"	-000° 33' 24.1929"
67	50° 35' 46.1905"	-000° 13' 4.6597"	163	50° 46' 51.7030"	-000° 33' 23.6624"
68	50° 35' 26.4347"	-000° 14' 9.0079"	164	50° 46' 51.7067"	-000° 33' 23.6272"
69	50° 35' 44.1096"	-000° 20' 10.6548"	165	50° 46' 52.2817"	-000° 33' 18.8380"
70	50° 36' 25.6547"	-000° 21' 2.8378"	166	50° 46' 52.2855"	-000° 33' 18.8103"
71	50° 36' 27.9442"	-000° 21' 5.7145"	167	50° 46' 52.3480"	-000° 33' 16.5867"
72	50° 36' 33.7315"	-000° 21' 12.9867"	168	50° 46' 52.3819"	-000° 33' 15.6368"
73	50° 36' 36.0255"	-000° 21' 15.9940"	169	50° 46' 52.4500"	-000° 33' 14.2166"
74	50° 36' 42.3253"	-000° 21' 24.2532"	170	50° 46' 52.3827"	-000° 33' 13.4068"
75	50° 36' 50.0795"	-000° 21' 34.4205"	171	50° 46' 52.2788"	-000° 33' 12.3576"
76	50° 37' 0.5901"	-000° 21' 48.2036"	172	50° 46' 52.1807"	-000° 33' 11.5423"
77	50° 37' 2.6269"	-000° 21' 50.8749"	173	50° 46' 52.1397"	-000° 33' 11.1979"
78	50° 37' 26.1929"	-000° 22' 21.7880"	174	50° 46' 52.0974"	-000° 33' 10.8392"
79	50° 37' 27.1480"	-000° 22' 23.0411"	175	50° 46' 51.8731"	-000° 33' 8.8265"
80	50° 36' 38.8171"	-000° 27' 24.4229"	176	50° 46' 51.3468"	-000° 33' 2.6428"
81	50° 36' 16.5551"	-000° 29' 46.1531"	177	50° 46' 51.3360"	-000° 33' 2.4787"
82	50° 36' 12.3786"	-000° 30' 12.7043"	178	50° 46' 51.3359"	-000° 33' 2.4775"
83	50° 35' 33.2206"	-000° 34' 21.0588"	179	50° 46' 51.2831"	-000° 33' 1.9360"
84	50° 35' 29.7384"	-000° 34' 43.2949"	180	50° 46' 51.0907"	-000° 32' 59.8173"
85	50° 35' 11.5476"	-000° 36' 40.5405"	181	50° 46' 50.8304"	-000° 32' 56.7205"
86	50° 35' 8.6938"	-000° 36' 58.9128"	182	50° 46' 50.6907"	-000° 32' 54.9373"
87	50° 35' 8.5860"	-000° 37' 35.2466"	183	50° 46' 50.5692"	-000° 32' 53.2671"
88	50° 35' 15.1952"	-000° 37' 36.0920"	184	50° 46' 50.5517"	-000° 32' 53.0243"
89	50° 35' 17.9985"	-000° 37' 36.4578"	185	50° 46' 50.4801"	-000° 32' 52.0184"
90	50° 35' 18.0869"	-000° 37' 36.4693"	186	50° 46' 50.4366"	-000° 32' 51.4437"
91	50° 35' 25.0537"	-000° 37' 37.3783"	187	50° 46' 50.4028"	-000° 32' 51.0278"
92	50° 35' 31.1113"	-000° 37' 38.1688"	188	50° 46' 50.3262"	-000° 32' 50.1580"
93	50° 35' 52.0407"	-000° 37' 40.9002"	189	50° 46' 50.1892"	-000° 32' 48.5032"
94	50° 36' 22.3039"	-000° 37' 44.8508"	190	50° 46' 50.1151"	-000° 32' 47.5480"
95	50° 36' 24.7136"	-000° 37' 45.1655"	191	50° 46' 49.9511"	-000° 32' 45.2090"
96	50° 36' 36.3272"	-000° 37' 45.6819"			

6. The grid coordinates for that part of the offshore Order limits seaward of MLWS where the part of the authorised project comprising Work No. 5 may be carried out as shown on the offshore works plans are specified below—

Table 5

<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>
1	50° 47' 54.8542"	-000° 32' 41.2745"	44	50° 46' 46.9907"	-000° 33' 49.6586"
2	50° 47' 47.1541"	-000° 32' 41.3703"	45	50° 46' 46.4507"	-000° 33' 51.2883"
3	50° 47' 24.0826"	-000° 32' 41.6574"	46	50° 46' 46.0305"	-000° 33' 52.5844"
4	50° 46' 49.8007"	-000° 32' 42.0835"	47	50° 46' 45.5808"	-000° 33' 53.9984"
5	50° 46' 49.9511"	-000° 32' 45.2090"	48	50° 46' 45.2637"	-000° 33' 55.0152"
6	50° 46' 50.1151"	-000° 32' 47.5480"	49	50° 46' 44.3810"	-000° 33' 57.9636"
7	50° 46' 50.1892"	-000° 32' 48.5032"	50	50° 46' 44.3721"	-000° 33' 57.9966"
8	50° 46' 50.3262"	-000° 32' 50.1580"	51	50° 46' 43.3239"	-000° 34' 1.3002"
9	50° 46' 50.4028"	-000° 32' 51.0278"	52	50° 46' 42.9023"	-000° 34' 2.7225"
10	50° 46' 50.4366"	-000° 32' 51.4437"	53	50° 46' 42.5759"	-000° 34' 3.8412"
11	50° 46' 50.4801"	-000° 32' 52.0184"	54	50° 46' 42.2559"	-000° 34' 4.9738"

12	50° 46' 50.5517"	-000° 32' 53.0243"	55	50° 46' 41.8814"	-000° 34' 6.3216"
13	50° 46' 50.5692"	-000° 32' 53.2671"	56	50° 46' 40.5811"	-000° 34' 11.3611"
14	50° 46' 50.6907"	-000° 32' 54.9373"	57	50° 46' 39.2202"	-000° 34' 17.6871"
15	50° 46' 50.8304"	-000° 32' 56.7205"	58	50° 46' 38.9607"	-000° 34' 19.0720"
16	50° 46' 51.0907"	-000° 32' 59.8173"	59	50° 46' 38.8484"	-000° 34' 19.6871"
17	50° 46' 51.2831"	-000° 33' 1.9360"	60	50° 46' 38.3829"	-000° 34' 22.3753"
18	50° 46' 51.3359"	-000° 33' 2.4775"	61	50° 46' 38.0846"	-000° 34' 24.1951"
19	50° 46' 51.3360"	-000° 33' 2.4787"	62	50° 46' 37.7138"	-000° 34' 26.5748"
20	50° 46' 51.3468"	-000° 33' 2.6428"	63	50° 46' 37.6810"	-000° 34' 26.8347"
21	50° 46' 51.8731"	-000° 33' 8.8265"	64	50° 46' 37.1267"	-000° 34' 30.0528"
22	50° 46' 52.0974"	-000° 33' 10.8392"	65	50° 46' 37.0010"	-000° 34' 30.8770"
23	50° 46' 52.1397"	-000° 33' 11.1979"	66	50° 46' 37.0004"	-000° 34' 30.8806"
24	50° 46' 52.1807"	-000° 33' 11.5423"	67	50° 46' 36.5355"	-000° 34' 33.8272"
25	50° 46' 52.2788"	-000° 33' 12.3576"	68	50° 46' 36.0094"	-000° 34' 37.7299"
26	50° 46' 52.3827"	-000° 33' 13.4068"	69	50° 46' 35.9055"	-000° 34' 38.5822"
27	50° 46' 52.4500"	-000° 33' 14.2166"	70	50° 46' 35.6054"	-000° 34' 41.2313"
28	50° 46' 52.3819"	-000° 33' 15.6368"	71	50° 46' 35.5994"	-000° 34' 41.2888"
29	50° 46' 52.3480"	-000° 33' 16.5867"	72	50° 46' 35.5228"	-000° 34' 42.0236"
30	50° 46' 52.2855"	-000° 33' 18.8103"	73	50° 46' 35.4901"	-000° 34' 42.2812"
31	50° 46' 52.2817"	-000° 33' 18.8380"	74	50° 46' 34.7296"	-000° 34' 45.1770"
32	50° 46' 51.7067"	-000° 33' 23.6272"	75	50° 46' 33.3681"	-000° 34' 51.5025"
33	50° 46' 51.7030"	-000° 33' 23.6624"	76	50° 46' 32.2718"	-000° 34' 57.9549"
34	50° 46' 51.6477"	-000° 33' 24.1929"	77	50° 46' 31.4453"	-000° 35' 4.5064"
35	50° 46' 51.5789"	-000° 33' 24.7195"	78	50° 46' 30.8922"	-000° 35' 11.1291"
36	50° 46' 51.3391"	-000° 33' 26.6492"	79	50° 46' 30.6147"	-000° 35' 17.7946"
37	50° 46' 51.3096"	-000° 33' 26.8988"	80	50° 46' 30.6142"	-000° 35' 24.4745"
38	50° 46' 51.1191"	-000° 33' 27.9509"	81	50° 46' 30.8906"	-000° 35' 31.1402"
39	50° 46' 50.3164"	-000° 33' 32.8380"	82	50° 46' 31.3325"	-000° 35' 36.4412"
40	50° 46' 49.4912"	-000° 33' 39.3906"	83	50° 46' 50.5124"	-000° 35' 32.2424"
41	50° 46' 49.1345"	-000° 33' 43.6730"	84	50° 47' 32.2233"	-000° 35' 23.1074"
42	50° 46' 48.2437"	-000° 33' 46.1079"	85	50° 47' 32.8858"	-000° 35' 22.9623"
43	50° 46' 47.8546"	-000° 33' 47.2974"			

PART 2

ANCILLARY WORKS

1. Works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development;
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- (c) temporary works for the benefit or protection of land or structures affected by the authorised development.

PART 3

REQUIREMENTS

Time limits

1.—(1) The authorised project must commence no later than the expiration of seven years beginning with the date this Order comes into force.

Detailed offshore design parameters

2.—(1) The total number of wind turbine generators comprised in the authorised project must be no more than 90 having a total rotor swept area of no more than 4.45 square kilometres.

(2) Subject to sub-paragraph (3), each wind turbine generator forming part of the authorised project must have—

- (a) a height of no more than 325 metres when measured from LAT to the tip of the vertical blade;
- (b) a rotor diameter of no more than 295 metres;
- (c) a distance of no less than 22 metres from MHWS to the lowest point of the rotating blade; or
- (d) a distance of no less than 830m from the nearest wind turbine generator in all directions,

and the authorised project will comprise turbines of a uniform height and rotor diameter.

(3) The reference in sub-paragraph (2)(d) to the location of a wind turbine generator is a reference to the centre point of that wind turbine generator.

(4) Wind turbine generator foundation structures forming part of the authorised development must be one of the following foundation options: monopile foundation, or multileg foundation.

(5) Wind turbine generator—

(a) multileg foundations employing pin piles forming part of the authorised project are to have—

- (i) no more than 4 legs per foundation;
- (ii) no more than 4 pin piles per foundation; and
- (iii) a pin pile diameter of no greater than 4.5 metres;

(b) multileg foundations with suction bucket are to have—

- (i) no more than 4 legs per wind turbine generator;
- (ii) a suction bucket diameter of no more than 15 metres; and
- (iii) a suction bucket penetration of no more than 25 metres; and

(c) monopile foundation forming part of the authorised project are to have a diameter no greater than 13.5 metres.

(6) The total volume of scour protection comprising development associated with the wind turbine generators comprising Work No.1 must be no more than 1,215,000 cubic metres with a maximum footprint of 405,000 square metres.

3.—(1) There must be no more than 3 offshore substations.

(2) The dimensions of any offshore substation forming part of the authorised project must be no more than—

- (a) 65 metres in height when measured from LAT and 115 metres in height with lightning protection and ancillary structures;
- (b) 80 metres in length; and
- (c) 50 metres in width.

(3) There must be no offshore substation located within 500 metres of the array periphery.

(4) Offshore substation foundation structures forming part of the authorised project must comprise either monopile foundations or multileg foundations.

(5) Offshore substation installations with—

- (a) multileg foundation employing pin piles forming part of the authorised project are to have—
 - (i) no more than 6 legs per foundation;
 - (ii) no more than 12 pin piles per foundation; and
 - (iii) a pin pile diameter of no greater than 4.5 metres; and
- (b) monopile foundation forming part of the authorised project are to have a diameter no greater than 13.5 metres.

4. The total volume of scour protection comprising development associated with the offshore substations comprising Work No. 3 must be no more than 65,700 cubic metres with a maximum footprint of 21,900 square metres.

5.—(1) The total number of cable circuits must be no more than four.

(2) The total length of the cable circuits comprising Work No. 2 must be no more than 250 kilometres.

(3) The total volume of cable protection comprising development associated with Work No 2 must be no more than 175,000 cubic metres with a maximum footprint of 300,000 square metres.

(4) The number of cable crossings comprising Work No. 2 must be no more than four unless otherwise agreed with the MMO.

(5) The maximum area impacted by cable crossings must be no more than 10,000 square metres.

(6) The total volume of cable protection for cable crossings must not exceed 20,000 cubic metres (pre- and post-lay).

(7) The total length of the cable circuits comprising Work No. 3(b) must be no more than 40 kilometres.

(8) The total volume of cable protection comprising development associated with Work No 3(b) must be no more than 110,500 cubic metres with a maximum footprint of 122,000 square metres.

(9) The total length of cable circuits comprising Work Nos 3(b), 4 and 5 together must be no more than 170 kilometres.

(10) The total volume of cable protection comprising development associated with Work Nos. 4 and 5 must be no more than 470,000 cubic metres with a maximum footprint of 517,000 square metres.

Cable parameters

6.—(1) Cable circuits comprising Works Nos. 6 and 7 must be installed by means of horizontal directional drilling (HDD).

(2) There must be no more than 4 HDD drills completed for Work Nos. 6 and 7.

(3) All cable circuits and joint bays comprising Work Nos. 8, 9 and 19 must be installed in ducting underground and the land above reinstated to pre-construction ground level save for manholes and link box chambers and once constructed all joint boxes and link box chambers must be resilient to flooding.

(4) Trenchless technology must be used to install the cable circuits in the locations identified in the crossings schedule (comprising part of the code of construction practice approved pursuant to requirement 22) for the purpose of passing under a relevant obstruction

(5) There are to be no more than 66 joint bay locations each comprising up to four joint bays.

(6) There are to be no more than 264 link boxes and no more than 264 fibre optic cable joint boxes.

Onshore substation parameters

7.—(1) The total fenced area for the substation compound (excluding access) comprising Work No. 16 must be no more than 60,000 square metres.

(2) The total area for the substation extension comprising Work No. 20 to be incorporated into the existing National Grid substation at Bolney must be no more than 6,300 square metres.

Site-specific plan for the detailed design approval of the onshore substation at Oakendene

8.—(1) No stage which includes works comprising any part of Work No. 18, together with the parts of Work No. 17 associated with those works, accesses A61 and A64 as shown on sheet 33 of the access rights of way and streets plans at Kent Street, or establishment and use of either of the compounds comprising Work No. 10 shown on sheet 33 of the onshore works plans (excluding any onshore site preparation works) must commence until, only insofar as such works are included within or relate to works within that stage

- (a) The following details of the substation (Work No.16):
 - (i) siting and layout;
 - (ii) scale and quantum of development and its uses;
 - (iii) existing and proposed finished ground levels;
 - (iv) landscaping;
 - (v) access (Work No. 18); and
 - (vi) external appearance, form and materials for any buildings structures and other infrastructure including boundary treatment,
 - (b) a single comprehensive traffic management and access plan covering:
 - (i) the programming and routing of construction traffic along the A272 and into and out of the compounds comprising Work No. 10 shown on sheet 33 of the onshore works plans and Kent Street;
 - (ii) the safety of construction accesses off the A272 and Kent Street;
 - (iii) the safety of non-construction traffic, pedestrians, cyclists and equestrians using Kent Street;
 - (iv) the restriction of HGV traffic from unsuitable routes off the A272;
 - (v) measures to minimise the volume of construction traffic passing through the Air Quality Management Area at Cowfold;
 - (vi) traffic management measures in respect of any previous stage approved under this requirement; and
 - (c) details of vegetation removal, retention and replanting within Work Nos. 16 and 18 and along Kent Street at construction accesses A61 and A64 as shown on sheet 33 of the access rights of way and streets plans, which shall be consistent with the Outline Landscape and Ecology Management Plan
- have been submitted to and approved in writing by the relevant planning authority following consultation with the highway authority and West Sussex Fire and Rescue Service and works covered by the details submitted under this sub-paragraph (1) must be carried out in accordance with the approved details.

(2) Where details are approved pursuant to sub-paragraph (1) then details for

- (a) Construction traffic management;
 - (b) Accesses A61 and A64 as shown on sheet 33 of the access rights of way and streets plans;
 - (c) Vegetation removal, retention and replanting for the part of the stage for which approval has been secured under sub-paragraph 8(1);
- shall not be required to be approved under requirements 12, 13, 15 24 as applicable.

(3) Any details provided by the undertaker pursuant to sub-paragraph (1) must accord with the principles set out in the relevant part of the design and access statement including taking account of climate change allowances, relationship to and effect on heritage assets, must accord with the drainage arrangements approved pursuant to requirement 17, include details of any water harvesting and recycling measures and be within the Order limits.

(4) The details submitted pursuant to sub-paragraph (3) must demonstrate how the operation of Work No. 16 will secure water neutrality.

(5) To the extent comprised in Work No. 16—

- (a) there must be no more than 12 buildings;
- (b) the height of the main operational building and other infrastructure must be no more than 28.75 metres above ordnance datum;
- (c) the maximum main building length must be no more than 70 metres;
- (d) the maximum main building width must be no more than 20 metres;

(e) lightning protection masts must be no more than a height of 34.25 metres above ordnance datum; and

(f) the maximum height of any fire walls must be no more than 26.25 metres above ordnance datum.

(6) For the purposes of paragraph (3) the term ‘water neutrality’ means that the use of water in the supply area before the development of Work No. 16 is the same or lower after the development is in place in order to meet the requirements of regulation 63 of the Conservation of Habitats and Species Regulations 2017.

(7) For the purposes of paragraph (4) the term ‘building’ excludes electrical infrastructure installations.

Detailed design approval – extension to National Grid substation

9.—(1) Works comprising Work No. 20 (excluding onshore site preparation works) must not commence until details of—

(a) siting and layout;

(b) scale and quantum of development and its uses;

(c) existing and proposed finished ground levels;

(d) landscaping;

(e) access; and

(f) external appearance, form and materials for any buildings structures and other infrastructure including boundary treatment,

of the extension to the National Grid substation at Bolney have been submitted to and approved in writing by the relevant planning authority in consultation with the highway authority and Work No. 20 must be carried out in accordance with the approved details.

(2) Any details provided by the undertaker pursuant to sub-paragraph (1) must accord with the principles set out in the relevant part of the design and access statement unless otherwise agreed with the relevant planning authority, take account of climate change allowances, accord with the drainage arrangements approved pursuant to requirement 17, and be within the Order limits.

(3) To the extent comprised in Work No. 20—

(a) there must be no more than two buildings;

(b) operational buildings must be no more than no more than 12 metres in height above finished ground level;

(c) the maximum height of any associated infrastructure must be no more than 12 metres in height above finished ground level;

(d) the maximum building length must be no more than 35 metres;

(e) the maximum building width must be no more than 20 metres; and

(f) the maximum height of any other infrastructure must be no more than 12 metres.

(4) For the purposes of paragraph (3) “finished ground level” will be defined in accordance with the design and access statement.

Stages of onshore works

10.—(1) No part of the authorised project within the Order limits landward of MLWS excluding onshore site preparation works is to commence until a written programme identifying the stages of those works has been submitted to and approved by the relevant planning authorities and to the extent that it relates to works seaward of mean high water springs comprising Work No. 6 following consultation with the MMO.

(2) No onshore site preparation works are to commence until a written programme identifying the stages of those onshore site preparation works has been submitted to and approved by the relevant planning authorities and to the extent that it relates to works seaward of mean high water springs comprising Work No. 6 following consultation with the MMO.

(3) The authorised project must be implemented in stages as approved and each reference to a stage in these requirements is a reference to a stage in the programme as so approved.

Offshore Decommissioning

11. No offshore works are to commence until a written decommissioning programme in compliance with any notice served upon the undertaker by the Secretary of State pursuant to section 105(2) of the 2004 Act^(a) has been submitted to the Secretary of State for approval.

Provision of landscaping

12.—(1) No stage of the authorised project within the onshore Order limits are to commence until for that stage a written landscape and ecology management plan and associated work programme (which accords with the relevant provisions of the outline landscape and ecology management plan and outline code of construction practice) has been submitted to and approved by the relevant planning authority following consultation with the statutory nature conservation body, Historic England (where relevant) and the Forestry Commission (where relevant).

(2) Any landscape and ecology management plan submitted under sub-paragraph (1)—

- (a) may cover one or more stages of the onshore works; and
- (b) may provide for the phased provision of planting within a stage.

(3) The landscape and ecology management plan for a stage which includes Work No. 16 and/or Work No. 20 (excluding for a stage comprising onshore site preparation works) is to include the relevant part of Work No. 17 and must accord with the relevant part of the design and access statement unless otherwise agreed by the relevant planning authority.

(4) Each stage specific landscape and ecology management plan must be implemented as approved.

Implementation and maintenance of landscaping

13.—(1) All landscape works must be carried out in accordance with the landscape and ecology management plan for the relevant stage approved under requirement 12 (provision of landscaping), and in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted as part of an approved landscape and ecology management plan that, within a period of 10 years after completion of planting for the relevant stage, is removed by the undertaker, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise approved in writing by the relevant planning authority.

Biodiversity net gain

14.—(1) No stage of the authorised project within the onshore Order limits (excluding any onshore site preparation works) is to commence until—

- (a) a biodiversity net gain strategy for that stage which accords with the outline biodiversity net gain information comprising Appendix 22.15 of the Environmental Statement has been approved in writing by the relevant planning authority; and
- (b) at least 70% of the total number of biodiversity units as required for that stage of the development have been secured and where appropriate proof of purchase provided in accordance with the approved biodiversity net gain strategy and to the satisfaction of the relevant planning authority in consultation with the statutory nature conservation body.

(2) The location for delivery of biodiversity units is to follow a prioritisation exercise, as described in Appendix 22.15 of the Environmental Statement, with priority given to areas inside or within close proximity to the proposed DCO limits.

(3) The biodiversity net gain strategy for each relevant stage must be implemented as approved.

(4) Any remaining shortfall in biodiversity units identified following detailed design will be secured prior to construction works being completed.

(5) Any biodiversity net gain strategy under sub-paragraph (1) may cover one or more stages of the onshore works.

^(a) Section 105(2) was substituted by section 69(3) of the Energy Act 2008 (c. 32).

Highway accesses outside the South Downs National Park

15.—(1) Construction of any—

- (a) new operational means of access to a highway to be used by vehicular traffic;
- (b) new temporary means of access to a highway to be used by vehicular traffic; or
- (c) alteration, or use of an existing means of access to a highway to be used by vehicular traffic,

outside the South Downs National Park must not commence until an access plan for the relevant access has been submitted to and approved by the highway authority for the relevant highway.

(2) The access plans submitted pursuant to sub-paragraph (1) must include details of the siting, design, layout, visibility splays, access management measures and a maintenance programme relevant to the access it relates to and secure that all temporary and permanent accesses are provided to Department for Transport Design Manual for Roads and Bridges design standards or as otherwise agreed with the highway authority.

(3) The highway accesses (including visibility splays) must be constructed and maintained for the period required in accordance with the details approved pursuant to sub-paragraph (1).

Highway accesses in the South Downs National Park

16.—(1) Construction of any

- (a) new temporary means of access to a highway to be used by vehicular traffic; or
- (b) alteration, or use of an existing means of access to a highway to be used by vehicular traffic,

within the South Downs National Park is not to commence until written details of the siting, design, layout, visibility splays, access management (which shall be provided to Department for Transport Design Manual for Roads and Bridges design standards or as otherwise agreed with the highway authority) and a maintenance programme relevant to the access has been submitted to and approved by the highway authority for the relevant highway following consultation with South Downs National Park Authority.

(2) The highway accesses within the South Downs National Park must be constructed and maintained for the period required in accordance with the details approved pursuant to sub-paragraph (1).

Operational drainage management

17.—(1) No works to construct the onshore substation comprising Work No. 16 (excluding any onshore site preparation works) are to commence until an operational drainage plan including written details of the surface and (if any) foul water drainage system (including means of pollution control) and its management during the operational life of the authorised development, in accordance with the outline operational drainage plan has been submitted to and approved by the lead local flood authority following consultation with the relevant sewerage and drainage authorities and the Environment Agency.

(2) The surface and foul water drainage system for Work No. 16 must be constructed and maintained in accordance with the approved details.

18.—(1) No works to construct the extension of the National Grid substation comprising Work No. 20 (excluding any onshore site preparation works) are to commence until an operational drainage plan including written details of the surface and (if any) foul water drainage system (including means of pollution control) and its management during the operational life of the authorised development, in accordance with the outline operational drainage plan has been submitted to and approved by the lead local flood authority following consultation with the relevant sewerage and drainage authorities and the Environment Agency.

(2) The surface and foul water drainage system for Work No. 20 must be constructed and maintained in accordance with the approved details.

Onshore Archaeology

19.—(1) No stage of the authorised project within the onshore Order limits are to commence until a site-specific written scheme of archaeological investigation for that stage which must accord with the outline onshore written

scheme of investigation has been submitted to and approved by the relevant planning authority following consultation with West Sussex County Council.

(2) All archaeological investigations including those carried out as part of onshore site preparation works must be carried out in accordance with the relevant written scheme of archaeological investigation approved under sub-paragraph (1).

(3) The archaeological site investigations and post investigation assessment must be completed in accordance with the programme set out in the written scheme of archaeological investigation and provision made for analysis, publication and dissemination of results and archive deposition.

(4) Any written scheme or archaeological investigation submitted under sub-paragraph (1) may cover one or more stage of the onshore works.

(5) In the event of the discovery of previously unknown archaeological remains within the onshore Order limits, their significance and suitability for preservation in situ must be assessed by field evaluation, in accordance with the outline onshore written scheme of investigation. Any archaeological remains which are demonstrably of national significance will be preserved in situ unless it is agreed by the relevant planning authority following consultation with West Sussex County Council, that either they are not suitable for preservation in situ or that preservation in situ cannot be achieved acceptably (including obtaining all necessary consents). Should archaeological remains be left in situ on any site, a site-specific archaeological management plan must be submitted to and approved in writing by the relevant planning authority following consultation with West Sussex County Council. Any further works, including removal and reinstatement, must be carried out in accordance with the approved site-specific archaeological management plan, unless otherwise approved by the relevant planning authority.

Public rights of way

20.—(1) No stage of the authorised project within the onshore Order limits is to commence until a public rights of way management plan for the management of public rights of way (excluding the National Trail in the South Downs National Park) located within that stage and which accords with the outline public rights of way management plan has been submitted to and approved in writing by the highway authority following consultation with the relevant planning authority which is to include (where relevant for the stage) a programme for the temporary closure and re-opening of the public rights of way specified at Schedule 4 (public rights of way), save for the National Trail in the South Downs National Park, comprising—

- (a) a plan for the sequencing of construction of the onshore works;
- (b) the management of any alternative routes during the temporary closure; and
- (c) the re-opening of the public rights of way upon the cessation of that part of the authorised project requiring the temporary closure of those rights of way.

(2) No stage of the authorised project within the onshore Order limits which includes the National Trail in the South Downs National Park is to commence until a public rights of way management plan for the relevant stage has been submitted to and approved in writing by the South Downs National Park Authority a programme for the temporary closure and re-opening of the National Trail within that stage, comprising—

- (i) a plan for the sequencing of construction of the onshore works;
- (ii) the management of any alternative routes during the temporary closure; and
- (iii) the re-opening of the National Trail upon the cessation of that part of the authorised development requiring the temporary closure of the National Trail.

(3) Any public rights of way management plan submitted under sub-paragraph (1) may cover one or more stage of the onshore works.

(4) The public rights of way management plan for each stage must be implemented as approved.

(5) No stage of the onshore works are to commence unless the undertaker has provided to the highway authority and the South Downs National Park Authority a rights of way and access land communication management plan, which is to include—

- (a) proposals for informing the public of the start and duration of the connection works where public rights of way or the access land described in Schedule 6 (temporary suspension of public access to access land) are affected, including signage; and

- (b) details of the proposed diversions and temporary closures to minimise impacts on public rights of way during construction of the connection works,

and the details provided in accordance with this sub-paragraph (5) must be implemented during the construction of the relevant stages of the onshore works to which they relate.

Open access land

21.—(1) No stage of the authorised project within which an area of access land is located is to commence until an open access land management plan for that area of access land has been submitted to and approved in writing by the highway authority following consultation with the relevant planning authority as part of the public rights of way management plan for the stage within which the open access land is located pursuant to requirement 20.

(2) Any open access land management plan submitted under sub-paragraph (1) may cover one or more area of open access land.

(3) Each open access land management plan submitted in accordance with sub-paragraph (1) must be implemented as approved.

Code of construction practice

22.—(1) No stage of any works landward of MLWS is to commence until a detailed code of construction practice for the stage has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency, the statutory nature conservation body, the highway authority and the lead local flood authority and, to the extent that it relates to works seaward of mean high water springs comprising Work No. 6, the MMO.

(2) Any construction code of practice submitted under sub-paragraph (1) may cover one or more stage of the works landward of MLWS.

(3) All construction works landwards of MLWS must be undertaken in accordance with the relevant approved code of construction practice.

(4) The code of construction practice must accord with the outline code of construction practice and include, as appropriate to the relevant stage—

- (a) arboricultural method statement and tree protection plan;
- (b) construction phase drainage plan;
- (c) materials management plan;
- (d) site waste management plan which accords with the outline site waste management plan;
- (e) soil management plan which accords with the outline soils management plan;
- (f) biodiversity management plan including invasive non-native species protocol;
- (g) noise and vibration management plan (construction) which accords with the outline noise and vibration management plan;
- (h) air quality management plan which accords with the outline air quality management plan;
- (i) emergency response plan;
- (j) pollution prevention plan and pollution incident response plan;
- (k) details for dealing with contaminated land and groundwater;
- (l) arrangements for temporary fencing or other means of secure enclosure of the construction sites and compounds during the carrying out of the connection works and their removal on their completion;
- (m) details for dealing with artificial light emissions (construction);
- (n) hours of construction working; and
- (o) water quality monitoring programme;

Onshore construction method statement

23.—(1) No stage of the authorised project within the Order limits landward of MLWS is to commence until an onshore construction method statement for the construction of the relevant stage of the works which accords with the

outline construction method statement has been submitted to and approved in writing by the relevant planning authority following consultation with the statutory nature conservation body and to the extent that it relates to works seaward of mean high water springs comprising Work No. 6, the MMO.

(2) The onshore construction method statements referred to in paragraph (1) must, as appropriate to the relevant stage—

- (a) include details for the location, depth, method and process for horizontal directional drilling for the cable circuit installation works comprising Work Nos. 6 and 7 including restrictions on works above ground;
- (b) restrict access within ecologically sensitive sites including Climping Beach Site of Special Scientific Interest, Littlehampton Golf Course and Atherington Beach Local Wildlife Site, Sullington Hill Local Wildlife Site and ancient woodland at Michelgrove Park and Calcot Wood;
- (c) secure that the landfall construction compound comprising Work No. 8 do not exceed 120 metres x 100 metres;
- (d) secure that compounds associated with horizontal directional drilling do not exceed 50 metres x 75 metres;
- (e) secure appropriate burial depth for the onshore cable circuits comprising Work Nos. 9 and 19 within the relevant stage including under watercourses crossed by trenchless technology;
- (f) confirm the cable construction corridor location and its width through the relevant stage including that the width through treelines and areas of woodland is narrowed to no more than 30 metres;
- (g) include planned methods and processes for all crossings identified by the stage specific code of construction practice to be installed by trenchless technology; and
- (h) include a protocol for restoration and reinstatement of land used temporarily for construction including provisions to secure that the construction corridor through areas of woodland, across tree lines and important hedgerows (as defined pursuant to the Hedgerow Regulations 1997) are to be reinstated and which must accord with the stage specific landscape and ecological management plan approved pursuant to requirement 12 above.

(3) Any construction method statement submitted under sub-paragraph (1) may cover one or more stage of the works landward of MLWS.

(4) Each onshore construction method statement submitted in accordance with sub-paragraph (1) must be implemented as approved.

Construction traffic management plan

24.—(1) No stage of the authorised project within the onshore Order limits landwards of MLWS is to commence until written details of

- (a) a construction traffic management plan (which accords with the outline construction traffic management plan); and
- (b) a construction workforce travel plan (which accords with the outline construction workforce travel plan),

for the stage have each been submitted to and approved by the highway authority following consultation with the relevant planning authority.

(2) The construction traffic management plan must include, as a minimum—

- (a) a routing plan to secure that heavy goods vehicles (HGVs) used during the construction period are to avoid settlements, the Air Quality Management Area in Cowfold and the A24 through Findon wherever possible;
- (b) management of junctions and crossings of the public highway; and
- (c) measures for laying cable circuits in streets by either single lane control or short road closure depending on the location.

(3) Any construction traffic management plan submitted under sub-paragraph (1)(a) or construction workforce travel plan submitted under sub-paragraph (1)(b) may cover one or more stage of the onshore works.

(4) The construction traffic management plan for each stage must be implemented as approved.

(5) The onshore construction workforce travel plan for each stage must be implemented as approved.

Contamination risk

25.—(1) No construction works excluding onshore site preparation works are to commence within the onshore Order limits in the localised areas identified within the preliminary risk assessment (desk study) included in chapter 25 of the environmental statement as being at risk from contamination until land contamination assessments have been undertaken for that localised area of the onshore Order limits and has been submitted to and approved by the relevant planning authority.

(2) The land contamination assessments must be carried out in accordance with the Environment Agency's Land Contamination Risk Management manual ("the LCRM") and will include the following—

- (a) results of a site investigation scheme and quantitative risk assessment based on the findings of the preliminary risk assessment (desk study) to identify any site-specific assessment risks to receptors that may require a remediation strategy described in sub-paragraph (b);
- (b) where unacceptable risks are identified based on the results of the site investigation and risk assessment referred to in sub-paragraph (a), a remediation strategy giving full details of the remediation measures required and how they are to be undertaken;
- (c) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy secured by sub-paragraph (b) are complete and have been effective; and
- (d) provision of a verification report in line with the verification plan referred to in sub-paragraph (c) prior to completion of the works.

(3) If, during the course of construction, previously unidentified contamination is discovered, construction must cease on that localised area of land within the onshore Order limits (unless otherwise agreed in writing with the relevant planning authority) and the contamination reports to the relevant planning authority within 10 working days. Construction must not recommence on that localised area of land within the onshore order limits until a remediation strategy (including a verification plan) detailing how this contamination will be dealt with has been submitted to, and approved by, the relevant planning authority. The remediation strategy is to be developed in accordance with LCRM, which may include further site investigation and risk assessment, and must then be implemented as approved by the relevant planning authority.

Coastal erosion

26.—(1) No works comprising Work Nos. 6 or 7 are to commence until a coastal erosion and future beach profile estimation assessment has been carried out and a scheme identifying any mitigation or adaptive management measures required to help minimise the vulnerability of this part of the Order land from future coastal erosion and tidal flooding (if required) has been submitted to and approved in writing by the Environment Agency.

(2) Any mitigation or adaptive management measures identified as part of the scheme submitted pursuant to (1) above must be implemented as approved.

Operation phase maintenance

27.—(1) The authorised development must not be brought into commercial use unless an operations and maintenance plan (OMP) for the onshore substation comprising Work No. 16 has been provided to the relevant planning authority.

(2) The OMP provided pursuant to sub-paragraph (1) must include as a minimum—

- (a) a pollution prevention plan;
- (b) a pollution incident control plan; and
- (c) a risk assessment for major accidents and disasters.

28.—(1) The authorised development must not be brought into commercial use unless an operations and maintenance plan (OMP) for the extension to the National Grid substation at Bolney comprising Work No. 20 has been provided to the relevant planning authority.

(2) The OMP provided pursuant to sub-paragraph (1) must include as a minimum—

- (a) a pollution prevention plan;
- (b) a pollution incident control plan; and

- (c) a risk assessment for major accidents and disasters.

Control of noise during operational phase

29.—(1) The onshore substation comprising Work No. 16 must not be commissioned unless an operational noise management plan (NMP) for the transmission substation has been submitted to and approved by the relevant planning authority.

(2) The NMP submitted pursuant to sub-paragraph (1) must set out the particulars of—

- (a) the noise attenuation and mitigation measures to be taken to minimise noise resulting from the onshore substation, including any noise limits (subject to paragraph (3) below); and
- (b) a scheme for monitoring attenuation and mitigation measures provided under sub-paragraph (a) which must include—
 - (i) the circumstances under which noise will be monitored;
 - (ii) limitations on noise levels at sensitive locations;
 - (iii) the locations at which noise will be monitored;
 - (iv) the method of noise measurement which must be in accord with the relevant British Standards or other agreed noise;
 - (v) measurement methodology appropriate to the circumstances); and
 - (vi) a complaints procedure.

(3) The NMP submitted pursuant to sub-paragraph (1) must ensure that the rating levels (noise emissions plus any character correction) from operation of the onshore substation comprising Work No. 16 will not exceed the noise levels set out in the design principles in the design and access statement.

(4) The approved NMP must be implemented throughout the operational life of the authorised development.

(5) Work No. 20 must not commence, excluding onshore site preparation works, until a plan has been submitted to the relevant planning authority which provides details of the equipment to be installed at the substation extension comprising Work No. 20 including:

- (a) its operational equipment that has the potential to generate noise emissions; and
- (b) characterisation of any sound and the expected frequency and duration of any such emissions to demonstrate that such emission will not have a discernible or measurable effect in the context of the existing noise environment at the National Grid substation at Bolney.

Control of artificial light emissions during operational phase

30.—(1) Work No. 16 must not commence, excluding onshore site preparation works, until an operational light emissions management plan providing details of artificial light emissions during the operation of Work No. 16, including measures to minimise lighting pollution and the hours of lighting, in accordance with the design principles in the design and access statement, has been submitted to and approved by the relevant planning authority.

(2) The approved lighting plan must be implemented throughout the operational life of the authorised development.

31.—(1) Work No. 20 must not commence, excluding onshore site preparation works, until an operational light emissions management plan providing details of artificial light emissions during the operation of Work No. 20, including measures to minimise lighting pollution and the hours of lighting design principles in the design and access statement has been submitted to and approved by the relevant planning authority.

(2) The approved lighting plan must be implemented throughout the operational life of the authorised development.

Operational Travel Plan

32.—(1) Prior to the commencement of the operation of the authorised development an operation travel plan which must accord with the outline operational travel plan must be submitted to the relevant planning authority for approval following consultation with West Sussex County Council as highway authority.

(2) The approved operation travel plan must be implemented throughout the operational life of the authorised development.

Skills and Employment Strategy

33.—(1) No works comprising the authorised development are to commence, excluding onshore site preparation works, until a skills and employment strategy, in accordance with the outline skills and employment strategy, has been submitted to and approved by West Sussex County Council following consultation with the relevant planning authorities for all stages of the authorised development.

(2) The skills and employment strategy must be implemented as approved.

Construction Communication Plan

34.—(1) No stage of the authorised project landward of MLWS, excluding any onshore site preparation works, is to commence until a construction communication plan in accordance with the outline construction communication plan has been provided to and approved by the relevant planning authorities.

(2) The construction communication plan must be implemented as approved throughout the construction of the authorised project within the onshore order limits.

Onshore decommissioning

35.—(1) The undertaker must notify the relevant planning authority of the permanent cessation of commercial operation of the authorised development within 28 days following the date of permanent cessation.

(2) Within six months of the cessation of commercial operation of the connection works an onshore decommissioning plan must be submitted to the relevant planning authority for approval unless otherwise agreed in writing by the relevant planning authority.

(3) The approved decommissioning plan must be implemented unless otherwise agreed in writing by the relevant planning authority.

Requirement for written approval

36. Where the approval, agreement or confirmation of the Secretary of State, relevant planning authority, highway authority or another person is required under a requirement, that approval, agreement or confirmation must be given in writing.

Amendments to approved details

37.—(1) With respect to any requirement which requires the authorised project to be carried out in accordance with the details approved by the relevant planning authority, highway authority or another person, the approved details must be carried out as approved unless an amendment or variation is previously agreed in writing by the relevant planning authority, highway authority or that other person in accordance with sub- paragraph (2).

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant determining authority or that other person that the subject matter of the agreement sought is unlikely to give rise to any materially worse environmental effects from those assessed in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant determining authority or that other person.

Primary Surveillance Radar Mitigation

38.—(1) No part of any wind turbine generator (excluding foundations) shall be erected as part of the authorised development until a primary radar mitigation scheme agreed in advance with the operator has been submitted to and approved in writing by the Secretary of State in order to mitigate the impact of the authorised development on the primary radar of the operator located at Pease Pottage and associated air traffic management operations.

(2) No part of any wind turbine generator (excluding foundation) shall be erected until the approved primary radar mitigation scheme has been implemented and the authorised development shall thereafter be operated fully in accordance with the approved scheme.

(3) For the purpose of paragraphs (1) and (2) above—

“operator” means NATS (En Route) plc, incorporated under the Companies Act (Company Number 4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hampshire PO15 7FL or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of the Transport Act); and

“primary radar mitigation scheme” or “scheme” means a detailed scheme agreed with the operator which sets out the measures to be taken to mitigate the impact of the development on the primary radar located at Pease Pottage and air traffic management operations of the Operator.

Instrument flight procedures

39.—(1) Prior to commencement of the authorised development seaward of MHWS the undertaker must provide details of the number, specification (including lightning protection) and dimensions of each wind turbine generator and its location to the Airport Operator and provide confirmation of the same to the Secretary of State.

(2) Within 21 days of providing the information specified in sub-paragraph (1) above, (or such other period as may be agreed in writing between the undertaker and the Secretary of State), the undertaker must, with any written confirmation from the Airport Operator received within that 21 day period, provide written confirmation to the Secretary of State that—

- (a) none of the turbines to be installed in accordance with the information submitted pursuant to sub-paragraph (1) above would have an impact on the instrument flight procedures of Shoreham Airport; or
- (b) a turbine or turbines to be installed in accordance with the details submitted pursuant to sub-paragraph (1) above or their turbine blades would have an impact on the instrument flight procedures of Shoreham Airport and that an IFP Scheme is required.

(3) There shall be no commencement of the authorised development seaward of MHWS unless and until such time as—

- (a) the Secretary of State has confirmed and agreed in writing under paragraph 2(a); or
- (b) in the event that written notification under paragraph 2(b) is received, the Secretary of State has confirmed in writing that they are satisfied that the undertaker has put in place a binding undertaking to adequately compensate the Airport Operator for producing and securing the implementation of the IFP Scheme.

(4) If an IFP Scheme is required, no wind turbine generator or turbine blade that has been identified as having an impact on instrument flight procedures may be erected or fitted unless and until such time as the Secretary of State receives written confirmation and evidence from the undertaker that—

- (a) an IFP Scheme has been approved by the Airport Operator; and
- (b) the Civil Aviation Authority has evidenced its approval to the Airport Operator of the IFP Scheme (if such approval is required).

(5) For the purposes of this requirement—

“Airport Operator” means the operator of Shoreham Airport being Brighton City Airport Limited of The Terminal Building, Cecil Pashley Way, Shoreham-by-sea, West Sussex, BN43 5FF or any successor as holder of a licence under the Commission Regulation (EU) No. 139/2014 (or any successor regulation) from the Civil Aviation Authority to operate Shoreham Airport; and

“IFP Scheme” means a scheme to address the identified potential impact of certain wind turbine generators or turbine blades to be constructed on the instrument flight procedures of Shoreham Airport.

Vegetation retention and removal

40.—(1) No stage of works landward of MLWS is to commence until a vegetation retention and removal plan (which accords with the outline vegetation retention and removal plan) has been submitted to and approved by the relevant planning authority.

(2) Any vegetation retention and removal plan submitted under paragraph (1) may cover one or more stage of the onshore works.

(3) The vegetation retention and removal plan for each stage must be implemented as approved.

Horsham District mitigation and enhancement

41.—(1) The authorised project must not be commenced, save in respect of onshore site preparation works, until a Horsham District mitigation and enhancement scheme in accordance with the Horsham District mitigation and enhancement principles document has been submitted to and approved by Horsham District Council.

(2) The Horsham District mitigation and enhancement scheme must set out appropriate measures to compensate for the impact of the authorised development on the landscape character in which the onshore substation is located.

(3) The Horsham District mitigation and enhancement scheme must be implemented as approved.

(4) In this requirement “Horsham District mitigation and enhancement principles document” means the document certified as such by the Secretary of State under article 51.

Public rights of way and landscape enhancement

42.—(1) The authorised project must not be commenced, save in respect of onshore site preparation works until a public rights of way and landscape enhancement scheme in accordance with the public rights of way and landscape enhancement principles document has been submitted to and approved by West Sussex County Council.

(2) The public rights of way and landscape enhancement scheme must set out appropriate measures to compensate for—

- (a) the impact of the loss of hedgerows and trees during the construction of the authorised development on the use and enjoyment of the public rights of way network in West Sussex; and
- (b) towards improvements to the public rights of way network affected by the construction of the authorised development within a 5km buffer zone of the onshore Order limits.

(3) The public rights of way and landscape enhancement scheme must be implemented as approved.

(4) In this requirement “public rights of way and landscape enhancement principles document” means the document certified as such by the Secretary of State under article 51.

National Park enhancement and furtherance

43.—(1) The authorised project must not be commenced, save in respect of onshore site preparation works, until a National Park enhancement and furtherance scheme in accordance with the National Park enhancement and furtherance principles document has been submitted to and approved by South Downs National Park Authority.

(2) The National Park enhancement and furtherance scheme must set out appropriate measures to compensate for the impact of the authorised development on the South Downs National Park and seek to further the statutory purposes of the South Downs National Park as set out in section 5 of the National Parks and Access to the Countryside Act 1949.

(3) The National Park enhancement and furtherance scheme must be implemented as approved.

(4) In this requirement “National Park enhancement and furtherance principles document” means the document certified as such by the Secretary of State under article 51.

European protected species licence

44.—(1) No phase of the onshore works may commence until final pre-construction survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by that phase of the onshore works or in any of the trees to be lopped or felled as part of that phase of the onshore works.

(2) Where a European protected species is shown to be present, the relevant phase of the onshore works must not commence until, after consultation with Natural England and the relevant planning authority, a scheme of protection and mitigation measures has been submitted to and approved by the relevant planning authority or a European protected species licence granted by Natural England.

(3) The onshore works must be carried out in accordance with the approved scheme.

(4) In this requirement “European protected species” has the same meaning as in regulations 42 and 46 of the 2017 Regulations.

Site-specific plan for the detailed design approval of the temporary construction compounds at Washington and Climping

45.—(1) Works to provide the temporary construction compounds comprising Work No. 10 must not commence until details of-

- (a) siting and layout;
 - (b) scale and quantum of uses to be undertaken;
 - (c) existing and proposed ground levels throughout the use of the compound;
 - (d) access; and
 - (e) infrastructure including boundary treatment for the temporary construction compounds;
- have been submitted to and approved by the relevant planning authority following consultation with West Sussex County Council.

(2) Where details are approved pursuant to sub-paragraph (1) then details for access and egress points and visibility splays for the temporary construction compounds will not be required to be approved pursuant to requirements 15 or 24.

(3) The temporary construction compounds must be provided in accordance with the approved details.

Crossing Schedule

46.—(1) No stage of the authorised development shall commence until a trenchless crossing plan showing the final locations and extent of each trenchless crossing in that stage and its compound has been submitted to and approved by the relevant planning authority.

(2) The trenchless crossings in the relevant stages shall be undertaken in accordance with the approved details.

SCHEDULE 2

Article 9

STREETS SUBJECT TO STREET WORKS

<i>(1) Area</i>	<i>(2) Street subject to street works within the Order limits</i>	<i>(3) Identifier on the access and rights of way and street plan</i>
Arun District	Ferry Road	Marked AA to AB on sheet 1
Arun District	Church Lane	Marked AC to AD on sheet 2
Arun District	A284 Lyminster Road	Marked AE to AF on sheet 4
Arun District	Poling Street	Marked AG to AH on sheet 6
South Downs National Park	Michelgrove Lane	Marked AI to AJ on sheets 11 and 12
Horsham District and South Downs National Park	A283 Washington Road and Storrington Road	Marked AK to AL on sheet 21
South Downs National Park	A283 Storrington Road	Marked AM to AN on sheet 21
Horsham District and South Downs National Park	A283 The Pike	Marked AO to AP on sheet 22
Horsham District and South Downs National Park	A283 The Pike	Marked AQ to AR on sheet 22

Horsham District and South Downs National Park	A283 The Pike	Marked AS to AT on sheet 23
Horsham District and South Downs National Park	A283 The Pike	Marked AU to AV on sheet 23
Horsham District	Spithandle Lane	Marked AW to AX on sheet 26
Horsham District	B2135	Marked AY to AZ on sheet 27
Horsham District	B2135	Marked BA to BB on sheet 28
Horsham District	B2116 Shermanbury Road	Marked BC to BD on sheet 29
Horsham District	B2116 Shermanbury Road	Marked BE to BF on sheet 29
Horsham District	A281	Marked BG to BH on sheet 30
Horsham District	Kent Street	Marked BI to BJ on sheet 33
Horsham District	A272	Marked BK to BL on sheet 33
Horsham District and Mid-Sussex District	Wineham Lane	Marked BM to BN on sheet 34
Horsham District and Mid-Sussex District	Wineham Lane	Marked BO to BP on sheet 34

SCHEDULE 3

Article 11

STREETS TO BE TEMPORARILY CLOSED

<i>(1) Area</i>	<i>(2) Street to be temporarily closed</i>	<i>(3) Extent of temporary closure by reference to the identifiers on the access, rights of way and streets plan</i>
Horsham District	B2116 Shermanbury Road	Marked BE to BF on sheet 29

SCHEDULE 4

Article 12

PUBLIC RIGHTS OF WAY

PART 1

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED

<i>(1) Area</i>	<i>(2) Public rights of way to be temporarily closed</i>	<i>(3) Extent of temporary closure by reference to the identifiers on the access, rights of way and streets plan</i>
Arun District	Footpath 174	From 01a to 01b shown on sheet 1
Arun District	Footpath 173	From 02a to 02b shown on sheet 1
Arun District	Footpath 168	From 03a to 03b shown on sheet 2
Arun District	Footpath 168	From 04a to 04b shown on sheet 2
Arun District	Footpath 2163/1	From 06a to 06b shown on sheet 4
Arun District	Footpath 2202/1	From 08a to 08b shown on sheet 5
Arun District	Footpath 2199	From 10a to 10b shown on sheet 6
Arun District	Footpath 2198	From 11a to 11b shown on sheet 6

Arun District	Footpath 2176	From 12a to 12b shown on sheet 7
South Downs National Park	Footpath 2190	From 13a to 13b shown on sheet 7
South Downs National Park	Footpath 2174/1	From 16a to 16b shown on sheet 8
South Downs National Park	Bridleway 2208/1	From 17a to 17b shown on sheet 11
South Downs National Park	Footpath 2260/1	From 18a to 18b shown on sheet 13
South Downs National Park	Footpath 2262	From 19a to 19b shown on sheet 13
South Downs National Park	Byway open to all traffic 2092	From 25a to 25b shown on sheets 15 to 18
South Downs National Park	Bridleway 2103	From 26a to 26b shown on sheet 16
South Downs National Park	Bridleway 2107	From 27a to 27b shown on sheet 17
South Downs National Park	Bridleway 2018	From 28a to 28b shown on sheet 17
South Downs National Park	Bridleway 2109	From 29a to 29b shown on sheet 18
Horsham District	Bridleway 2711	From 36c to 36d shown on sheet 24
Horsham District	Footpath 2520	From 41a to 41b shown on sheet 27
Horsham District	Footpath 1841	From 45a to 45b shown on sheet 29
Horsham District	Bridleway 1774	From 45c to 45d shown on sheet 30
Horsham District	Footpath 1781	From 46a to 46b shown on sheet 31
Horsham District	Footpath 1776/1	From 47a to 47b shown on sheet 31
Horsham District	Footpath 1782	From 48a to 48b shown on sheet 32
Horsham District	Footpath 1783	From 49a to 49b shown on sheet 32

PART 2

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED AND A TEMPORARY SUBSTITUTE PROVIDED

<i>(1) Area</i>	<i>(2) Public rights of way to be temporarily closed</i>	<i>(3) Extent of temporary closure by reference to the identifiers on the access, rights of way and streets plan</i>	<i>(4) Temporary public right of way to be substituted</i>
Arun District	Footpath 2165	05a to 05b	Along a route shown indicatively by a purple line between identifiers 05a and 05b

Arun District	Bridleway 2163	07a to 07b	marked T01 on sheet 4 Along a route shown indicatively by a dotted yellow line between identifiers 07a and 07b marked T02 on sheet 5
Arun District	Footpath 2200	09a to 09b	Along a route shown indicatively by a purple line between identifiers 09a and 09b marked T03 on sheet 6
South Downs National Park	Bridleway 2188	14a to 14b	Along a route shown indicatively by a dotted yellow line between identifiers 14a and 14b marked T04 on sheet 7
South Downs National Park	Bridleway 2208	15a to 15b	Along a route shown indicatively by a dotted yellow line between identifiers 15a and 15b marked T05 on sheet 8
South Downs National Park	Bridleway 2173	20a to 20b	Along a route shown indicatively by a dotted yellow line between identifiers 20a and 20b marked T06 on sheet 14
South Downs National Park	Bridleway 2282/1	21a to 21b	Along a route shown indicatively by a dotted yellow line between identifiers 21a and 21b marked T07 on sheet 15
South Downs National Park	Bridleway 2282/1	22a to 22b	Along a route shown indicatively by a dotted yellow line between identifiers 22a and 24a marked T08 where it will join restricted bridleway 2092 or its diversion shown indicatively by a dotted yellow line marked T09

South Downs National Park	Restricted byway 2092 (comprising part of the South Downs Way)	23a to 23b	on sheets 15 and 19 Along a route shown indicatively by a dotted yellow line between identifiers 23a and 23b marked T09 on sheet 19
South Downs National Park	Restricted byway 2693 (comprising part of the South Downs Way)	30a to 30b	Along restricted byway 2092 and then via a route shown indicatively by a dotted yellow line between identifiers 30b and 25a marked T10 on sheets 15 and 19
South Downs National Park	Bridleway 2665	31a to 31b	Along a route shown indicatively by a dotted yellow line between identifiers 31a and 31b marked T11 on sheet 21
South Downs National Park	Bridleway 2697	32a to 32b	Along a route shown indicatively by a dotted yellow line between identifiers 32a and 32b marked T11a on sheet 21
Horsham District	Footpath 2701	33a to 33b	Along a route shown indicatively by a purple line between identifiers 33a and 33b marked T12 on sheet 22
South Downs National Park	Bridleway 2703	34a to 34b	Along a route shown indicatively by a dotted yellow line between identifiers 34a and 34b marked T13 on sheet 22
Horsham District	Footpath 2710	35a to 35b	Along a route shown indicatively by a dotted yellow line between identifiers 35a and 35b marked T14 on sheet 23
Horsham District	Bridleway 2711	36a to 36b	Along a route shown indicatively by a dotted yellow

Horsham District	Footpath 2514	37a to 37b	line between identifiers 36a and 36b marked T15 on sheet 24 Along a route shown indicatively by a dotted yellow line between identifiers 37a and 37b marked T16 on sheet 24
Horsham District	Bridleway 2594	38a to 38b	Along a route shown indicatively by a dotted yellow line between identifiers 38a and 38b marked T17 on sheet 25
Horsham District	Bridleway 2589/1	39a to 39b	Diverted in part along a route shown indicatively by a dotted yellow line between identifiers 39a and 39b marked T18 on sheet 25
Horsham District	Footpath 2519	40a to 40b	Along a route shown indicatively by a dotted yellow line between identifiers 40a and 40b marked T19 on sheet 27
Horsham District	Footpath 2372	42a to 42b	Along a route shown indicatively by a dotted yellow line between identifiers 42a and 42b marked T20 on sheet 28
Horsham District	Bridleway 3514	43a to 43b	Along a route shown indicatively by a dotted yellow line between identifiers 43a and 43b marked T21 on sheet 28
Horsham District	Footpath 2374	44a to 44b	Along a route shown indicatively by a dotted yellow line between identifiers 44a and 44b marked T22 on sheet 28
Horsham District	Bridleway 1730	50a to 50b	Along route shown indicatively by a dotted yellow line

Horsham District	Footpath 1787	51a to 51b	between identifiers 50a and 50b marked T27 on sheet 33 Along a route shown indicatively by a dotted yellow line between identifiers 51a and 51b marked T23 on sheet 33
Horsham District	Footpath 1786	52a to 52b	Along a route shown indicatively by a purple line between identifiers 52a and 52b marked T24 on sheet 33
Horsham District	Footpath 1789	53a to 53b	Along a route shown indicatively by a dotted yellow line between identifiers 53a and 53b marked T25 on sheet 33
Mid-Sussex District	Footpath 36B/1T	54a to 54b	Along a route shown indicatively by a dotted yellow line between identifiers 54a and 54b marked T26 on sheet 34

PART 3

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED AND A TEMPORARY SUBSTITUTE TO BE AGREED

<i>(1) Area</i>	<i>(2) Public rights of way to be temporarily closed</i>	<i>(3) Extent of temporary closure by reference to the identifiers on the access, rights of way and streets plan</i>
Arun District	Restricted byway 2092	23a to 24b shown on sheets 15 and 19
Horsham District and South Downs National Park	(comprising part of the South Downs Way)	
Arun District	Restricted byway 2693	301 to 30b shown on sheets 15 and 19
Horsham District		
Horsham District	Bridleway 3514 (comprising part of the National Cycle Network)	43a to 43b shown on sheet 28

SCHEDULE 5

ACCESS TO WORKS

Article 13

<i>(1) Area and location of access</i>	<i>(2) Description of access by reference to the identifiers on the access, rights of way and streets plan</i>
Arun District	Marked A-01 on sheet 1
Arun District	Marked A-02 on sheet 1
Arun District	Marked A-03 on sheet 1
Arun District	Marked A-04 on sheet 1
Arun District	Marked A-05 on sheet 2
Arun District	Marked A-06 on sheet 2
Arun District	Marked A-08 on sheet 2
Arun District	Marked A-09 on sheet 2
Arun District	Marked A-10 on sheet 3
Arun District	Marked A-11 on sheet 4
Arun District	Marked A-12 on sheet 4
Arun District	Marked A-13 on sheet 4
Arun District	Marked A-14 on sheet 4
Arun District	Marked A-15 on sheet 5
Arun District	Marked A-16 on sheet 5
Arun District	Marked A-17 on sheet 6
Arun District	Marked A-18 on sheet 6
Arun District	Marked A-20 on sheet 7
South Downs National Park	Marked A-21 on sheet 7
South Downs National Park	Marked A-22 on sheet 7
South Downs National Park	Marked A-23 on sheet 7
South Downs National Park	Marked A-24 on sheet 7
South Downs National Park	Marked A-25 on sheet 9
South Downs National Park	Marked A-26 on sheet 12
South Downs National Park	Marked A-27 on sheet 13
South Downs National Park	Marked A-28 on sheet 16
South Downs National Park	Marked A-29 on sheet 17
South Downs National Park	Marked A-30 on sheet 19
South Downs National Park	Marked A-31 on sheet 20
Horsham District and South Downs National Park	Marked A-32 on sheet 21
Horsham District and South Downs National Park	Marked A-33 on sheet 21
Horsham District and South Downs National Park	Marked A-34 on sheet 21
Horsham District and South Downs National Park	Marked A-35 on sheet 21
South Downs National Park	Marked A-36 on sheet 21
South Downs National Park	Marked A-37 on sheet 22
South Downs National Park	Marked A-38 on sheet 22
Horsham District	Marked A-39 on sheet 22
Horsham District and South Downs National Park	Marked A-40 on sheet 22
Horsham District and South Downs National Park	Marked A-41 on sheet 23
Horsham District	Marked A-42 on sheet 23

Horsham District	Marked A-43 on sheet 24
Horsham District	Marked A-43a on sheet 24
Horsham District	Marked A-43b on sheet 24
Horsham District	Marked A-44 on sheet 24
Horsham District	Marked A-45 on sheet 25
Horsham District	Marked A-46 on sheet 25
Horsham District	Marked A-47 on sheet 26
Horsham District	Marked A-48 on sheet 27
Horsham District	Marked A-49 on sheet 27
Horsham District	Marked A-50 on sheet 28
Horsham District	Marked A-50a on sheet 28
Horsham District	Marked A-50b on sheet 28
Horsham District	Marked A-51 on sheet 28
Horsham District	Marked A-52 on sheet 29
Horsham District	Marked A-53 on sheet 29
Horsham District	Marked A-54 on sheet 29
Horsham District	Marked A-55 on sheet 29
Horsham District	Marked A-56 on sheet 30
Horsham District	Marked A-57 on sheet 30
Horsham District	Marked A-57 on sheet 30
Horsham District	Marked A-58 on sheet 31
Horsham District	Marked A-59 on sheet 32
Horsham District	Marked A-60 on sheet 32
Horsham District	Marked A-61 on sheet 33
Horsham District	Marked A-62 on sheet 33
Horsham District	Marked A-63 on sheet 33
Horsham District	Marked A-64 on sheet 33
Horsham District	Marked A-65 on sheet 34
Horsham District	Marked A-66 on sheet 34
Mid-Sussex District	Marked A-67 on sheet 34
Mid-Sussex District	Marked A-68 on sheet 34
Mid-Sussex District	Marked A-69 on sheet 34

SCHEDULE 6

Article 22

TEMPORARY SUSPENSION OF PUBLIC ACCESS TO ACCESS LAND

<i>(1) Area</i>	<i>(2) Area subject to temporary suspension of public access</i>
Horsham District and South Downs National Park	Area shaded orange and marked OAL1 shown on the open access land plan within the Order limits.
Horsham District	Area shaded orange and marked OAL2 shown on the open access land plan within the Order limits.

SCHEDULE 7

Article 25

ACQUISITION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS ONLY

<i>(1) Number of land shown on land plans</i>	<i>(2) Purpose for which rights may be acquired and restrictive covenants may be imposed</i>
1a/1, 1a/2, 1b/1, 1b/2, 1b/3, 1b/4, 1b/5, 1b/6, 1/1, 1/2, 1/3, 1/4	Underground Cable Connection Rights All rights necessary for the purposes of the construction, installation, retention, operation, maintenance and decommissioning of the authorised development comprising Work Nos. 5 and 6, including to— (a) lay down, install, construct, string out, erect, adjust, alter, retain, operate, use, maintain, repair, renew, upgrade, inspect, remove and replace electricity cable circuits in, under, over and/or on the land, or seabed or in ducts beneath the land or seabed (including the removal of materials including spoil) to connect offshore cable circuits to onshore cable circuits, together with such telemetry and fibre-optic lines, ducting and other apparatus, equipment and protection measures ancillary to the purposes of transmitting electricity along such electricity cables (collectively referred to as the “underground connection cables”); (b) effect access to offshore apparatus and carry out works for the purposes of the construction, installation, operation, maintenance and decommissioning of the parts of the authorised project that communicate between the onshore and offshore elements of the authorised project; (c) install, retain, connect, maintain and use apparatus to connect onshore transmission apparatus to offshore transmission apparatus; (d) benefit from continuous vertical and lateral support for the authorised development; (e) retain and use or permit the cables to transmit and distribute any matters or thing the transmission of which is not prohibited by law through, to and from the land; (f) remove vegetation which now or hereafter may be standing on the land or other land which would, if not removed, obstruct or interfere with the working of the cables; (g) excavate materials below ground or sea bed level, including soils, and to store and re-use or dispose of the same, and in so excavating to undertake any works,

including works of protection or removal of archaeological remains as may be required by any written scheme of investigation approved under this Order;

- (h) store and stockpile soil, materials and equipment (including excavated material);
- (i) place and use plant, machinery, equipment, structures and temporary structures on the sea bed for the purposes of the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;
- (j) make such investigations in, on or under the land including the sea bed as required, including archaeological investigations;
- (k) lay down, install, construct, adjust, alter, re-lay, replace, retain, maintain, protect and remove pipes, cables, conduits or other utility apparatus (including the pipes, cables or conduits or other apparatus of statutory undertakers);
- (l) carry out horizontal directional drilling or any other trenchless method of installing the cables and associated cable ducts, the effects of which are within those assessed in the environmental statement, including crossing beneath sea defences including walls and groynes, and to create, use and remove drilling launch and exit pits;
- (m) carry out such works required by the Order, a planning permission and/or consent now or to be granted over the land in accordance with any necessary licences relating to protected species and/or wildlife (which for the avoidance of doubt includes newts);
- (n) lay down, install, use, retain, maintain and inspect underground cables, telephone signalling and fibre-optic cables and ancillary equipment, associated works and other conducting media together with conduits or pipes for containing the same in and under the land;
- (o) remove any works carried out and reinstate the sea bed thereafter; and
- (p) such other rights as may be necessary to facilitate any onshore and offshore

1a/1, 1a/2, 1b/1, 1b/2, 1b/3, 1b/4, 1b/5, 1b/6,
1/1, 1/2, 1/3, 1/4

Further Works, as defined in Schedule 1
to the Order, that may be required.

Underground Cable Connection Restrictive Covenant

A restrictive covenant over the land for the
benefit of the remainder of the Order land to—

- (a) prevent anything to be done by way of excavation of any kind exceeding 0.3 metres in depth from the surface of the sea bed or land or any activities which increase or decrease sea bed or land cover or change the composition of the sea bed or land in any manner whatsoever, without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed, if the proposed activity would not cause damage to the relevant part of the authorised development nor make it materially more difficult to access or maintain the authorised development, with such consent being subject to such reasonable conditions as the undertaker may require);
- (b) prevent anything being done which may interfere with the free flow and passage of electricity or telecommunications through the cables or support for the authorised development; and
- (c) prevent anything being done in or on the land or any part thereof which will, or which the owner can reasonably foresee may, interfere with the exercise of the other rights set out in this Schedule, or the use of the authorised development or in any way render the authorised development or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

1/5, 1/6, 1/7, 1/8, 1/16

Onshore Connection Rights

All rights necessary for the purposes of the construction, installation, retention, operation, maintenance and decommissioning of the authorised development comprising Work No. 7, including to—

- (a) lay down, install, construct, erect, adjust, alter, retain, operate, use, maintain, repair, renew, upgrade, inspect, remove and replace electricity cable circuits and associated cable ducts in, under, over and/or on the land (including the removal of materials including spoil) to connect offshore

cable circuits to onshore cable circuits, together with such telemetry and fibre-optic lines, ducting, cable markers and other apparatus, equipment and protection measures ancillary to the purposes of transmitting electricity along such electricity cables (collectively referred to as the “onshore connection cables”);

- (b) adjust, alter, remove, replace, create, retain and use tunnels under sea defences including walls and groynes;
- (c) effect access to offshore apparatus and carry out works for the purposes of the construction, installation, retention, operation, maintenance and decommissioning of the parts of the authorised project that communicate between the onshore and offshore elements of the authorised project;
- (d) install, retain, connect, maintain and use apparatus to connect onshore transmission apparatus to offshore transmission apparatus;
- (e) enter, be on, and break up the surface of, the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables;
- (f) benefit from continuous vertical and lateral support for the authorised development;
- (g) retain and use or permit the cables to transmit and distribute any matters or thing the transmission of which is not prohibited by law through, to and from the land;
- (h) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and personnel, including creating, using and removing haul roads;
- (i) place and use plant, machinery, equipment, structures and temporary structures within the land for the purposes of the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;
- (j) erect, use and remove fencing, gates, walls, barriers or other means of enclosure, and create use and remove secure working areas and compounds including trenchless installation

technique compounds and working areas;

- (k) construct, lay down, use and remove temporary access roads including any necessary temporary bridging, culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal is being carried out;
- (l) effect access to the highway;
- (m) make such investigations in, on or under the land as required, including archaeological investigations;
- (n) install, retain and maintain cable marker posts to identify the location of the cables (subject to an obligation to minimise interference with future use and operations within the land);
- (o) fell, lop, cut, coppice, uproot or remove trees, hedges, shrubs or other vegetation which now or hereafter may be standing on the land or other land which would if not felled, lopped, cut or removed obstruct or interfere with the working of the cables;
- (p) remove and discharge water from the land and to lay down, install, construct, create, adjust, alter, use, retain, maintain, repair, renew, upgrade, refurbish, reconstruct, improve, inspect, cleanse, remove and protect pre- and post-development drainage schemes on the land or reinstate or modify the existing land drainage scheme on the land and thereafter cleanse and maintain, alter, adjust, replace, improve or extend culverts;
- (q) lay down, install, construct, adjust, alter, re-lay, replace, retain, maintain, protect and remove pipes, cables, conduits or other utility apparatus (including the pipes, cables or conduits or other apparatus of statutory undertakers);
- (r) remove fences within the land during any period during which construction, maintenance, repair, renewal or decommissioning is being carried out (subject to erection of any temporary stock-proof fencing as is reasonably required and the re-instating of the original fences following the exercise of the rights);
- (s) excavate materials below ground level, including soils, and to store and re-use

- or dispose of the same, and in so excavating to undertake any works, including works of protection or removal of archaeological remains as may be required by any written scheme of investigation approved under this Order;
- (t) store and stockpile soil, materials and equipment (including excavated material);
 - (u) carry out horizontal directional drilling or any other trenchless method of installing the cables and associated cable ducts, the effects of which are within those assessed in the environmental statement;
 - (v) lay out, use and remove temporary paths for public use;
 - (w) carry out, install, execute, implement, retain, repair, improve, renew, relocate, maintain and protect landscaping, environmental or ecological mitigation or enhancement works or measures;
 - (x) carry out such works (together with associated fencing) required by the Order, a planning permission and/or consent now or to be granted over the land in accordance with any necessary licences relating to protected species and/or wildlife (which for the avoidance of doubt includes newts);
 - (y) lay down, install, retain, use, maintain and inspect underground cables, telephone signalling and fibre-optic cables and ancillary equipment, associated works and other conducting media together with conduits or pipes for containing the same in and under the land;
 - (z) remove any works carried out and reinstate the land thereafter, including planting and replanting any trees, hedges, shrubs or other vegetation; and
 - (aa) such other rights as may be necessary to facilitate any onshore Further Works as defined in Schedule 1 to the Order, that may be required.

1/9, 1/17

Transition Joint Bay Rights

All rights necessary for the purposes of the construction, installation, retention, operation, maintenance and decommissioning of the authorised development comprising Work No. 8, including to—

1/9, 1/10, 1/17, 1/18, 1/21, 1/24, 2/2, 2/3, 2/4, 2/24, 2/25, 2/26, 2/33, 2/34, 3/1, 3/2, 3/4, 3/5, 3/8, 3/9, 3/13, 3/14, 3/23, 3/24, 3/25, 3/26, 4/1, 4/2, 4/5, 4/6, 4/14, 4/15, 4/16, 4/22, 4/24, 5/1, 5/6, 5/7, 5/8, 5/9, 5/10, 5/11, 5/12, 5/13, 5/14, 6/1, 6/2, 6/3, 6/4, 6/5, 6/6, 7/1, 7/4, 7/5, 7/6, 7/12, 7/13, 7/23, 7/24, 7/25, 7/30, 8/1, 8/2, 8/3, 8/4, 10/1, 10/2, 10/3, 10/4, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 13/1, 13/2, 13/3, 13/4, 13/5, 14/1, 14/3, 14/6, 15/1, 15/2, 19/1, 19/2, 20/1, 20/2, 20/3, 20/4, 20/5, 20/6, 20/7, 20/8, 21/1, 21/22, 21/24, 21/39, 21/42, 21/43, 21/44, 22/1, 22/2, 22/3, 22/4, 22/5, 22/6, 22/7, 22/8, 22/9, 22/10, 22/11, 22/12, 22/13, 22/14, 22/18, 22/22, 22/23, 22/24, 22/25, 22/27, 22/30, 23/1, 23/2, 23/7, 23/8, 23/9, 23/16, 23/17, 23/18, 23/19, 23/20, 23/21, 24/1, 24/2, 24/10, 24/11, 24/12, 24/15, 24/17, 25/1, 25/2, 25/6, 25/11, 25/12, 25/13, 26/1, 26/2, 26/3, 26/11, 26/12, 26/13, 26/14, 26/15, 27/1, 27/15, 27/16, 27/27, 27/28, 28/1, 28/2, 28/25, 28/26, 29/1, 29/2, 29/8, 29/9, 29/17, 29/18, 29/19, 29/22, 29/23, 30/1, 30/2, 30/3, 30/4, 30/5, 30/7, 30/12, 30/13, 30/14, 31/1, 31/4, 32/1, 32/2, 32/3, 32/7, 32/8, 32/11, 32/15, 32/16, 33/1, 33/23, 33/24, 33/26, 33/27, 33/28, 34/1, 34/2, 34/3, 34/4, 34/5, 34/16, 34/17, 34/18, 34/19, 34/20, 34/21, 34/22, 34/23, 34/24, 34/25, 34/26

- (a) create, use and remove drilling launch and exit pits; and
- (b) erect, install, adjust, alter, retain, operate, use, maintain, repair, renew, upgrade, inspect, protect, remove and replace transition joint bays (including the removal of materials including spoil).

Cable Rights

All rights necessary for the purposes of the construction, installation, retention, operation, maintenance and decommissioning of the authorised development comprising Work Nos. 8, 9 and 19, including to—

- (a) lay down, install, construct, string out, erect, adjust, alter, retain, operate, use, maintain, repair, renew, upgrade, inspect, remove and replace electricity cables (including the removal of materials including spoil) in, under, over and/or on the land, together with such telemetry and fibre-optic lines, ducting, jointing bays, chambers, manholes, manhole covers, cable marker posts and other apparatus, equipment and protection measures ancillary to the purposes of transmitting electricity along such electricity cables (collectively referred to as “the cables”);
- (b) enter, be on, and break up the surface of, the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables;
- (c) benefit from continuous vertical and lateral support for the authorised development;
- (d) retain and use or permit the cables to transmit and distribute any matters or thing the transmission of which is not prohibited by law through, to and from the land;
- (e) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and personnel, including creating, using and removing haul roads;
- (f) construct and install and thereafter use the land for all necessary purposes for the commissioning, construction, repair, testing, maintenance and decommissioning of the cables and any electric cables in, on or under other land

including (but not limited to) the following—

- (i) creation and use of facilities, and carrying out activities in connection with the cables or other work carried out in accordance with the rights;
- (ii) installation and use of portakabins/portaloos;
- (iii) storage of plant and equipment;
- (iv) creation and use of construction compounds and consolidation sites; and
- (v) installation and use of additional service lines or cables;
- (g) place and use plant, machinery, equipment, structures and temporary structures within the land for the purposes of the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;
- (h) erect, use and remove fencing, gates, walls, barriers or other means of enclosure, and create, use and remove secure working areas and compounds including trenchless installation technique compounds and working areas;
- (i) construct, lay down, use and remove temporary access roads including any necessary temporary bridging culverting or diversion of water courses and drains during any period during which construction, maintenance, repair or renewal is being carried out;
- (j) effect access to the highway;
- (k) make such investigations in, on or under the land as required, including archaeological investigations;
- (l) install, retain and maintain cable marker posts to identify the location of the cables (subject to an obligation to minimise interference with future use and operations within the land);
- (m) fell, lop, cut, coppice, uproot or remove trees, hedges, shrubs or other vegetation which now or hereafter may be standing on the land or other land which would if not felled, lopped, cut or removed obstruct or interfere with the working of the cables;

- (n) remove and discharge water from the land and to lay down, install, construct, create, adjust, alter, use, retain, maintain, repair, renew, upgrade, refurbish, reconstruct, improve, inspect, cleanse, remove and protect pre- and post-development drainage schemes on the land or reinstate or modify the existing land drainage scheme on the land and thereafter cleanse and maintain, alter, adjust, replace, improve or extend culverts;
- (o) lay down, install, construct, adjust, alter, re-lay, replace, retain, maintain, protect and remove pipes, cables, conduits or other utility apparatus (including the pipes, cables or conduits or other apparatus of statutory undertakers);
- (p) remove fences within the land during any period during which construction, maintenances, repair or renewal or decommissioning is being carried out (subject to erection of any temporary stock-proof fencing as is reasonably required and the re-instating of the original fences following the exercise of the rights);
- (q) store and stockpile soil, materials and equipment (including excavated material);
- (r) excavate materials below ground level, including soils, and to store and re-use or dispose of the same, and in so excavating to undertake any works, including works of protection or removal of archaeological remains as may be required by any written scheme of investigation approved under this Order;
- (s) carry out open cut trenching or horizontal directional drilling or any other trenchless method of installing the cables the effects of which are within those assessed in the environmental statement, and create, use and remove launch and exit pits and associated cable ducts;
- (t) lay out, use and remove temporary paths for public use;
- (u) carry out, install, execute, implement, retain, repair, improve, renew, relocate, maintain and protect landscaping, environmental or ecological mitigation or enhancement works or measures;

- (v) carry out such works (together with associated fencing) required by the Order, a planning permission and/or consent now or to be granted over the land in accordance with any necessary licences relating to protected species and/or wildlife (which for the avoidance of doubt includes newts);
- (w) lay down, install, retain, use, maintain and inspect underground cables, telephone signalling and fibre-optic cables and ancillary equipment, associated works and other conducting media together with conduits or pipes for containing the same in and under the land;
- (x) remove any works carried out and reinstate the land thereafter, including planting and replanting any trees, hedges, shrubs or other vegetation; and
- (y) such other rights as may be necessary to facilitate any onshore Further Works as defined in Schedule 1 to the Order, that may be required.

Cable Restrictive Covenant

A restrictive covenant over the land for the benefit of the remainder of the Order land to—

- (a) prevent anything being done in or on the land or any part thereof for the purpose of—
 - (i) the erection of any buildings; or
 - (ii) the construction, erection or works of any kind requiring foundations, footings or other supporting structures,

without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed building, erection, construction or works would not cause damage to the relevant part of the authorised development nor make it materially more difficult to access or maintain the authorised development);

- (b) prevent anything to be done by way of hard surfacing of the land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to the relevant part of the authorised development nor

1/5, 1/6, 1/7, 1/8, 1/9, 1/10, 1/16, 1/17, 1/18, 1/21, 1/24, 2/2, 2/3, 2/4, 2/24, 2/25, 2/26, 2/33, 2/34, 3/1, 3/2, 3/4, 3/5, 3/8, 3/9, 3/13, 3/14, 3/23, 3/24, 3/25, 3/26, 4/1, 4/2, 4/5, 4/6, 4/14, 4/15, 4/16, 4/22, 4/24, 5/1, 5/6, 5/7, 5/8, 5/9, 5/10, 5/11, 5/12, 5/13, 5/14, 6/1, 6/2, 6/3, 6/4, 6/5, 6/6, 7/1, 7/4, 7/5, 7/6, 7/12, 7/13, 7/23, 7/24, 7/25, 7/30, 8/1, 8/2, 8/3, 8/4, 10/1, 10/2, 10/3, 10/4, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 13/1, 13/2, 13/3, 13/4, 13/5, 14/1, 14/3, 14/6, 15/1, 15/2, 19/1, 19/2, 20/1, 20/2, 20/3, 20/4, 20/5, 20/6, 20/7, 20/8, 21/1, 21/22, 21/24, 21/39, 21/42, 21/43, 21/44, 22/1, 22/2, 22/3, 22/4, 22/5, 22/6, 22/7, 22/8, 22/9, 22/10, 22/11, 22/12, 22/13, 22/14, 22/18, 22/22, 22/23, 22/24, 22/25, 22/27, 22/30, 23/1, 23/2, 23/7, 23/8, 23/9, 23/16, 23/17, 23/18, 23/19, 23/20, 23/21, 24/1, 24/2, 24/10, 24/11, 24/12, 24/15, 24/17, 25/1, 25/2, 25/6, 25/11, 25/12, 25/13, 26/1, 26/2, 26/3, 26/11, 26/12, 26/13, 26/14, 26/15, 27/1, 27/15, 27/16, 27/27, 27/28, 28/1, 28/2, 28/25, 28/26, 29/1, 29/2, 29/8, 29/9, 29/17, 29/18, 29/19, 29/22, 29/23, 30/1, 30/2, 30/3, 30/4, 30/5, 30/7, 30/12, 30/13, 30/14, 31/1, 31/4, 32/1, 32/2, 32/3, 32/7, 32/8, 32/11, 32/15, 32/16, 33/1, 33/23, 33/24, 33/26, 33/27, 33/28, 34/1, 34/2, 34/3, 34/4, 34/5, 34/16, 34/17, 34/18, 34/19, 34/20, 34/21, 34/22, 34/23, 34/24, 34/25, 34/26

make it materially more difficult to access or maintain the authorised development) provided that the undertaker acknowledges that—

- (i) the laying of new hard core access tracks does not require the consent of the undertaker where no manhole, access chamber or other access point serving the authorised development is located on the surface of the land; and
 - (ii) the maintenance or repair of pre-existing hard surfacing, hard core surfaces or tracks with the same or equivalent surface or material does not require the consent of the undertaker where no manhole, access chamber or other access point serving the authorised development is located on the surface of the land;
- (c) prevent anything to be done by way of excavation of any kind or agricultural practices exceeding 0.9 metres in depth from—
- (i) the surface of the land;
 - (ii) the true cleaned bottom of the open drain, ditch, watercourse or river; or
 - (iii) any activities which increase or decrease ground cover or soil levels or change the composition of the land in any manner whatsoever,

without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed activity would not cause damage to the relevant part of the authorised development nor make it materially more difficult to access or maintain the authorised development, with such consent being subject to such reasonable conditions as the undertaker may require);

- (d) prevent the planting or growing within the land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised development nor make it materially more difficult to maintain or to access the relevant part of the

authorised development) provided that the growing within the land of any pre-existing trees, shrubs or underwood do not require the consent of the undertaker;

- (e) prevent anything being done which may interfere with the free flow and passage of electricity or telecommunications through the cables or support for the authorised development;
- (f) prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of ecological mitigation areas or areas of habitat creation including any ploughing or grazing, during the period within which the undertaker is bound by any consent to maintain that ecological mitigation areas or areas of habitat creation, without the prior written consent of the undertaker; and
- (g) prevent anything being done in or on the land or any part thereof which will, or which the owner can reasonably foresee may, interfere with the exercise of the other rights set out in this Schedule, or the use of the authorised development or in any way render the authorised development or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.

1/11, 1/12, 1/13, 1/14, 1/15, 2/6, 2/7, 2/21, 2/22, 2/23, 2/28, 2/29, 2/30, 2/31, 2/32, 3/15, 3/16, 3/17, 3/18, 3/19, 3/20, 3/21, 3/22, 4/9, 7/26, 7/27, 7/28, 7/29, 7/31, 7/32, 7/33, 7/34, 7/35, 9/1, 9/2, 9/3, 10/5, 10/6, 12/12, 12/13, 12/14, 13/6, 13/7, 13/8, 14/2, 14/4, 14/5, 17/3, 17/4, 17/5, 17/6, 17/7, 17/8, 17/9, 17/10, 18/3, 18/7, 19/3, 19/4, 19/5, 19/6, 19/7, 19/8, 19/9, 19/10, 19/11, 20/9, 20/10, 20/11, 20/12, 20/13, 20/14, 20/15, 21/2, 21/3, 21/4, 21/5, 21/6, 21/7, 21/8, 21/9, 21/23, 21/25, 21/26, 21/27, 21/28, 21/29, 21/40, 21/41, 22/34, 22/35, 24/3, 24/4, 24/13, 24/14, 24/16, 25/3, 25/4, 25/5, 26/4, 26/6, 27/2, 28/6, 28/16, 28/17, 28/18, 28/19, 28/20, 28/21, 28/22, 28/23, 28/24, 29/10, 29/11, 29/12, 29/13, 29/20, 29/21, 31/5, 31/6, 31/7, 31/8, 31/9, 31/10, 31/11, 31/12, 31/13, 31/14, 31/15, 32/4, 32/5, 32/6, 32/9, 32/10, 32/12, 32/13, 32/14, 33/29, 34/9, 34/10, 34/11, 34/12, 34/13, 34/14, 34/40

Operational Access Rights

All rights necessary for the purposes of the operation, maintenance and decommissioning of the authorised development, including to—

- (a) pass and re-pass with or without vehicles, plant, machinery, apparatus, personnel, equipment and materials;
- (b) make such investigations in, on or under the land as are necessary for the purpose of enabling the right to pass and re-pass;
- (c) enter, be on, and break up the surface of, the land;
- (d) upgrade, surface, resurface, use and repair the land for the purposes of enabling the right to pass and re-pass to adjoining land, including creating visibility splays;
- (e) erect, use, repair and remove temporary bridges and supporting or protective structures for the purposes of gaining access to adjoining land;

- (f) remove and discharge water from the land and to lay down, install, construct, create, adjust, alter, use, retain, maintain, repair, renew, upgrade, refurbish, reconstruct, improve, inspect, cleanse, remove, and protect drainage schemes and associated management measures on the land;
- (g) fell, lop, cut, coppice, uproot and remove trees, hedges, shrubs or other vegetation which now or hereafter may be present on the land for the purpose of enabling the right to pass and re-pass to adjoining land;
- (h) erect, repair and remove temporary fencing and reinstate the land thereafter;
- (i) remove any works carried out to facilitate the right to pass and re-pass and reinstate the land thereafter, including planting and replanting any trees, hedges, shrubs or other vegetation; and
- (j) such other rights as may be necessary to facilitate any onshore Further Works, as defined in Schedule 1 to the Order, that may be required.

Construction and Operational Access Rights

All rights necessary for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised development, including to—

- (a) pass and re-pass with or without vehicles, plant, machinery, apparatus, personnel, equipment and materials;
- (b) make such investigations in, on or under the land as are necessary for the purpose of enabling the right to pass and re-pass;
- (c) enter, be on, and break up the surface of, the land;
- (d) upgrade, surface, resurface, use and repair the land for the purposes of enabling the right to pass and re-pass to adjoining land, including creating visibility splays;
- (e) erect, use, repair and remove temporary bridges and supporting or protective structures for the purposes of gaining access to adjoining land;
- (f) remove and discharge water from the land and to lay down, install, construct, create, adjust, alter, use, retain, maintain, repair, renew, upgrade, refurbish, reconstruct, improve, inspect,

2/5, 2/8, 2/12, 2/13, 2/14, 2/38, 2/39, 2/40, 2/41, 2/42, 3/6, 4/3, 4/4, 4/7, 4/23, 4/25, 4/26, 5/2, 5/3, 5/4, 5/5, 7/2, 7/3, 7/36, 11/7, 11/8, 11/9, 11/10, 11/11, 11/12, 11/13, 12/1, 12/4, 12/5, 12/9, 15/3, 17/1, 18/1, 18/2, 18/8, 18/9, 21/10, 23/3, 23/4, 24/5, 24/6, 25/7, 25/8, 25/9, 25/10, 26/5, 26/7, 27/3, 27/7, 27/10, 27/17, 27/18, 27/19, 27/20, 27/21, 27/22, 27/23, 27/24, 27/25, 27/26, 28/4, 28/7, 28/10, 28/12, 29/4, 29/5, 29/6, 29/7, 30/11, 30/15, 31/2, 31/3, 33/2, 33/3, 33/18, 33/19, 33/20, 33/25

- cleanse, remove and protect drainage schemes and associated management measures on the land;
- (g) fell, lop, cut, coppice, uproot and remove trees, hedges, shrubs or other vegetation which now or hereafter may be present on the land for the purpose of enabling the right to pass and re-pass to adjoining land;
- (h) erect, repair and remove temporary fencing and reinstate the land thereafter;
- (i) remove any works carried out to facilitate the right to pass and re-pass and reinstate the land thereafter, including planting and replanting any trees, hedges, shrubs or other vegetation; and
- (j) such other rights as may be necessary to facilitate any onshore Further Works, as defined in Schedule 1 to the Order, that may be required.

33/15, 33/17

Onshore Substation Access Road Rights

All rights necessary for the purposes of the construction, installation, retention, operation, maintenance and decommissioning of the authorised development comprising Work No.18, including to—

- (a) pass and re-pass with or without vehicles, plant, machinery, apparatus, personnel, equipment and materials;
- (b) make such investigations in, on or under the land as are necessary for the purpose of creating an access road;
- (c) enter, be on, and break up the surface of the land;
- (d) lay-down, surface, resurface, retain, use, repair, upgrade and remove an access road for the purposes of enabling the right to pass and re-pass, including creating visibility splays;
- (e) remove and discharge water from the land and to lay down, install, construct, create, adjust, alter, use, retain, maintain, repair, renew, upgrade, refurbish, reconstruct, improve, inspect, cleanse, remove, and protect drainage schemes and associated management measures on the land;
- (f) fell, lop, cut, coppice, uproot and remove trees, hedges, shrubs or other vegetation which now or hereafter may be present on the land for the purpose of enabling the creation and use of an

access road and the right to pass and re-pass;

- (g) erect, repair, operate, retain, replace and remove fencing, gates, barriers or other such security measures and equipment;
- (h) effect access to the highway;
- (i) remove the access road and any ancillary works carried out to facilitate the right to pass and re-pass and reinstate the land thereafter, including planting and replanting any trees, hedges, shrubs or other vegetation;
- (j) lay down, install, construct, adjust, alter, re-lay, replace, retain, maintain, protect and remove pipes, cables, conduits or other utility apparatus (including the pipes, cables or conduits or other apparatus of statutory undertakers);
- (k) benefit from continuous vertical and lateral support for the access road;
- (l) prevent anything being done in, on or under the land which will, or which the owner can reasonably foresee may, interfere with the exercise of the rights set out in (a) to (k) above; and
- (m) such other rights as may be necessary to facilitate any Further Works, as defined in Schedule 1 to the Order, as may be required.

33/10, 33/11, 33/14, 33/15, 33/16, 33/17,
33/30, 34/26, 34/27

Landscape and Environmental Mitigation Rights

All rights necessary for the purposes of the construction, installation, retention, operation, maintenance and decommissioning of the authorised development comprising Work No. 17, including to—

- (a) enter and be on the land and remain with or without vehicles, material, apparatus, equipment and personnel, to plant, install, execute, implement, retain, repair, improve, renew, relocate, replant, inspect, prune and remove trees, shrubs, hedgerows, seeding and other landscaping, ecological mitigation or enhancement measures including fencing, together with the right to retain, maintain, inspect and replant or replace such trees, shrubs, landscaping and environmental or ecological mitigation or enhancement measures including fencing and temporary works and the installation of temporary barriers for the protection of fauna;

- (b) carry out such works (together with associated fencing) required by the Order, a planning permission and/or consent now or to be granted over the land in accordance with any necessary licences relating to protected species and/or make such investigations in, on or under the land as required;
- (c) remove any works or measures carried out and reinstate the land; and
- (d) such other rights as may be necessary to facilitate any onshore Further Works, as defined in Schedule 1 of the Order, that may be required.

33/10, 33/11, 33/14, 33/15, 33/16, 33/17,
33/30, 34/26, 34/27

Landscaping and Environmental Mitigation Restrictive Covenant

A restrictive covenant over the land for the benefit of the remainder of the Order land to prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of landscaping, environmental or ecological mitigation or enhancement areas or areas of habitat creation including any ploughing or grazing, during the period within which the undertaker is bound by any consent to maintain that landscaping, environmental or ecological mitigation or enhancement area or area of habitat creation, without the prior written consent of the undertaker.

34/28

Unlicensed Works Rights

All rights necessary for the purposes of the construction, installation, retention, operation, maintenance and decommissioning of the authorised development comprising Work No. 20 (which work is defined for these purposes as “the Unlicensed Works”), including to—

- (a) lay down, install, adjust, alter, construct, create, operate, erect, use, maintain, repair, renew, upgrade, inspect, test, remove and replace electrical equipment comprising the Unlicensed Works;
- (b) enter and be on the land and remain with or without plant, vehicles, machinery, apparatus and equipment, and break up the surface of the land for the purposes of the Unlicensed Works;
- (c) pass and re-pass with or without vehicles, plant, machinery, apparatus, equipment and materials for the purposes of the Unlicensed Works;
- (d) place and use plant, machinery, structures and temporary structures, including foundations, within the land

- for the purposes of the Unlicensed Works;
- (e) erect, create and remove fencing and secure working areas for the purposes of the Unlicensed Works;
 - (f) make such investigations in or on the land as required for the purposes of the Unlicensed Works;
 - (g) install and maintain cable marker posts to identify the location of the cabling comprising the Unlicensed Works (subject to an obligation to minimise interference with future use and operations within the land);
 - (h) fell, lop or cut, coppice wood, uproot trees or hedges or shrubs which now or hereafter may be standing on the land which would if not felled, lopped, cut or removed obstruct or interfere with the Unlicensed Works;
 - (i) install, alter, re-lay, maintain, protect, adjust or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers) for the purposes of the Unlicensed Works; and
 - (j) such other rights as may be necessary to facilitate any onshore Further Works as defined in Schedule 1 to the Order, that may be required.
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SCHEDULE 8

Article 25

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for the words “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

(a) 1973 c. 26.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) (powers of entry) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 to the Rampion 2 Offshore Wind Farm Order 20xx);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 to the Rampion 2 Offshore Wind Farm Order 20xx) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of sub-section (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions of the 2008 Act) and modified by article 30 (modification of Part 1 of the 1965 Act) to the acquisition of land under article 23 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 24(1) or (2) (compulsory acquisition of rights and imposition of restrictive covenants)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References to the 1965 Act to land are, in the appropriate contexts to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (refusal to convey, failure to make title, etc.);
- (b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests, conveyance of the land or interest);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry) of the 1965 Act is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 30), it has power,

exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on a specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified accordingly.

(6) Section 20 (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 28(4) (application of the 1981 Act) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A

Ref

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 28 (application of the 1981 Act) of the Rampion 2 Offshore Wind Farm Order [20xx] in respect of the land to which the notice to treat relates.

(2) But see article 31(3) (acquisition of subsoil or airspace only) of the Rampion 2 Offshore Wind Farm Order [20xx] which excludes the acquisition of subsoil and airspace only from this Schedule.

2. In this schedule, “house”, except in paragraph 10, includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat;
- (b) accept the counter-notice; or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material damage to the house, building or factory; or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant;
- (b) the use to be made of the right or covenant proposed to be acquired or imposed; and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 9

Article 33

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Area</i>	<i>(2) Number of land shown on onshore plan</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of the authorised project</i>
Arun District	2/10, 2/11, 2/15	Temporary use as a construction compound and for access to facilitate construction of the authorised development, including any onshore Further Works, as defined in Schedule 1 to the Order, that may be required.	Work No. 10
Horsham District	22/15, 33/12, 33/13		

Arun District	2/9, 3/10, 3/11, 3/12, 4/8	Temporary use for the storage of excavated materials including but not limited to soil to facilitate construction of the authorised development, including any onshore Further Works, as defined in Schedule 1 to the Order, that may be required.	Work No. 11
Horsham District	28/3, 29/3		
Arun District	2/27, 3/7	Temporary use for non-intrusive works for duct and cable installation, preparation and stringing out, to facilitate construction of the authorised development, including any onshore Further Works, as defined in Schedule 1 to the Order, that may be required.	Work No. 12
Horsham District	19/12, 22/26, 22/28, 22/29		
Arun District	1/19, 1/20, 1/22, 1/23, 1/25, 2/1, 2/16, 2/17, 2/18, 2/19, 2/20, 2/35, 2/36, 2/37, 3/3, 4/10, 4/11, 4/12, 4/13, 4/17, 4/18, 4/19, 4/20, 4/21, 7/7, 7/8, 7/9, 7/10, 7/11, 7/14, 7/15, 7/16, 7/17, 7/18, 7/19, 7/20, 7/21, 7/22, 11/14, 11/15, 12/2, 12/3, 12/6, 12/7, 12/8, 12/10, 12/11	Temporary use for access, including effecting access to highways and the creation of visibility splays, to facilitate construction of the authorised development, including any onshore Further Works, as defined in Schedule 1 to the Order, that may be required.	Work No. 13
Horsham District	16/1, 16/2, 16/3, 16/4, 16/5, 16/6, 17/2, 18/4, 18/5, 18/6, 21/11, 21/12, 21/13, 21/14, 21/15, 21/16, 21/17, 21/18, 21/19, 21/20, 21/21, 21/30, 21/31, 21/32, 21/33, 21/34, 21/35, 21/36, 21/37, 21/38, 22/16, 22/17, 22/19, 22/20, 22/21, 22/31, 22/32, 22/33, 23/5, 23/6, 23/10, 23/11, 23/12, 23/13, 23/14, 23/15, 24/7,		

24/8, 24/9, 26/8, 26/9,
26/10, 27/4, 27/5,
27/6, 27/8, 27/9,
27/11, 27/12, 27/13,
27/14, 28/5, 28/8,
28/9, 28/11, 28/13,
28/14, 28/15, 29/14,
29/15, 29/16, 30/6,
30/8, 30/9, 30/10,
33/4, 33/5, 33/6, 33/7,
33/8, 33/21, 33/22

Mid-Sussex District 34/6, 34/7, 34/8,
34/15, 34/31, 34/32,
34/33, 34/34, 34/35,
34/36, 34/37, 34/38,
34/39, 34/41

SCHEDULE 10 PROTECTIVE PROVISIONS

Article 52

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

1. For the protection of the affected undertakers referred to in this Part 1 of Schedule 10 (Application) the following provisions must, unless otherwise agreed in writing between the undertaker and the affected undertaking concerned, have effect.

2. In this Part—

“affected undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act (“an electricity undertaker”);
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986^(a) (a “gas undertaker”);
- (c) a water undertaker within the meaning of the Water Industry Act 1991^(b) (a “water undertaker”); and
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991 (a “sewerage undertaker”),

for the area of the authorised development but, for the avoidance of doubt, does not include the undertakers specified in Part 3, Part 4 and Part 5 of this Schedule, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

“alternative apparatus” means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the 1989 Act), belonging to or maintained by that affected undertaker;

^(a) 1986 c. 44. A new Section 7 was substituted by Section 5 of the Gas Act 1995 (c. 45) and was further amended by Section 76 of the Utilities Act 2000 (c. 27).
^(b) 1991 c. 56.

- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) any mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991(a); and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the affected undertaker in accordance with the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewerage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties; and

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land.

Precedence of the 1991 Act in respect of apparatus in the streets

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

No acquisition etc. except by agreement

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an affected undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the affected undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the affected undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use

(a) 1991 c. 56.

reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(5) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48 and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the affected undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 48.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the affected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5 that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5, the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the affected undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an affected undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an affected undertaker in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the affected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (2)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Expenses and costs

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an affected undertaker, its officers, servants, contractors or agents.

(3) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, is

to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1.—(1) For the protection of any operator, the following provisions have effect unless otherwise agreed in writing between the undertaker and the operator.

(2) In this part of this Schedule—

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronics communications code) of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code; and

“operator” means the operator of an electronic communications code network.

2. The exercise of the powers of article 36 (statutory undertakers) are subject to Part 10 of Schedule 3A (the electronics communications code) to the Communications Act 2003.

3.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or

(b) there is any interruption in the supply of the service provided by an operator,

(c) the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must make reasonable compensation to an operator—

(i) for loss sustained by it; and

(ii) in respect of claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 48 (arbitration).

4. This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

5. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

1.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 5 (benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid.

Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained during the construction period of the authorised works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall cover (without limitation)—

- (a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid;
- (b) a pollution liability for third party property and damage and third party bodily damage arising from any pollution/contamination event with a (sub) limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission,

distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“incentive deduction” means any incentive deduction National Grid Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“NGESO” means as defined in the STC;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 5(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 5(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”;

“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

“STC Claims” means any claim made under the STC against National Grid Electricity Transmission plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector’s equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission plc’s transmission system which arises as a result of the authorised works;

“Transmission Owner” means as defined in the STC; and

“undertaker” means the undertaker as defined in article 2(1) of this Order.

Apparatus of National Grid in stopped up streets

3. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary closure of streets), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

4. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Acquisition of land

5.-(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to this Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement between the undertaker and National Grid.

(2) As a condition of an agreement between the parties pursuant to sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Grid and the undertaker the undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as a right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid not less than 56 days advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the

alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 6(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 12 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

8.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.
- (h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's reasonable satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 3 to 5 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

9.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in direct consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 5(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 12 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule of any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an Incentive Deduction other than that arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 5 (benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 8; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within National Grid’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid’s control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid’s apparatus unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 9(6) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

11. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

12.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 5(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 6, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

13. If in consequence of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. Save for differences or disputes arising under paragraph 5(2), 5(1) and 6 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 48 (arbitration).

Notices

15. Notwithstanding article 57 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 6 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

FOR THE PROTECTION OF SOUTHERN ELECTRIC POWER DISTRIBUTION PLC AS ELECTRICITY UNDERTAKER

Application

1. For the protection of SSE the following provisions will, unless otherwise agreed in writing between the undertaker and SSE, have effect.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of SSE to enable SSE to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989 belonging to or maintained by SSE;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning save that for the purposes of this Part of this Schedule the terms commence and commencement include operations consisting of archaeological investigations, intrusive investigations for the purpose of assessing ground conditions, and remedial work in respect of any contamination or other adverse ground conditions;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by SSE (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for SSE’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SSE including to construct, inspect, maintain, use, repair, renew or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to SSE and which shall have been approved by SSE acting reasonably;

“rights” shall include rights and restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“SSE” means Southern Electric Power Distribution plc (company number 04094290 whose registered office is at No. 1 Forbury Place, 43 Forbury Road, Reading, United Kingdom, RG1 3JH) or its successors in title or successor bodies and/or any successor as an electricity distribution licence holder pursuant to the Electricity Act 1989;

“SSE’s undertaking” means the rights, duties and obligations of SSE as an electricity distribution licence holder within the meaning of the Electricity Act 1989;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within, 15 metres measured in any direction of any apparatus, the removal of which has not been required by the undertaker under sub-paragraph 6(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus, the removal of which has not been required by the undertaker under sub-paragraph 6(2) or otherwise; and

“undertaker” means the undertaker as defined in article 2 of this Order.

On Street apparatus

3.—(1) The provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SSE are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraph 6 and 7 of this Part of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing adopted public highway.

Apparatus of SSE in stopped up streets

4.—(1) Notwithstanding the temporary closure or diversion of any highway under the powers of article 11 (temporary closure of streets), SSE will be at liberty at all times to take all necessary access across any such closed highway and/or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary closure or diversion in respect of any apparatus which at the time of the closure or diversion was in that highway subject to serving 7 days' notice on the undertaker (save in cases of emergency).

(2) The protective provisions in this Part of this Schedule apply and take precedence over article 37 (apparatus and rights of statutory undertakers in stopped up streets) of the Order which shall not apply to SSE.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SSE (not to be unreasonably withheld or delayed) and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of SSE or any interruption in the distribution of electricity by SSE, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by SSE in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall pay reasonable compensation to SSE for—

- (a) any loss sustained by it; and
- (b) all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by SSE, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of SSE or its contractors or workmen, and SSE will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise with any third party thereof shall be made by SSE, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Removal of apparatus

6.—(1) If, in consequences of the powers granted under this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SSE to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of SSE and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to SSE advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SSE reasonably needs to move or remove any of its apparatus) the undertaker must afford to SSE, to its reasonable satisfaction (taking into account sub-paragraph 7(1) below), the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SSE may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between SSE and the undertaker.

(5) SSE must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to, or procurement by, SSE of such facilities and rights as are referred to in sub-paragraphs (2) or (3) have been afforded to SSE to its reasonable satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SSE facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and SSE and must be no less favourable on the whole to SSE than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by SSE.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SSE under sub-paragraph 7(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SSE than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in SSE's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 14 (arbitration) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to SSE as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of SSE

8.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to SSE a plan and, if reasonably required by SSE, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to SSE under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(2) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until SSE has given written approval of the plan so submitted.

(3) Any approval of SSE required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(4) In relation to any work to which sub-paragraphs (1) and/or (2) apply, SSE may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(5) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or, as relevant, sub-paragraph (4), as approved or as amended from time to time by agreement

between the undertaker and SSE and in accordance with all conditions imposed under sub-paragraph (4)(a), and SSE will be entitled to watch and inspect the execution of those works.

(6) Any requirements made by SSE under sub-paragraph (5) must be notified to the undertaker within a period of 56 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(7) Where SSE requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature), such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to SSE's reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If SSE, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 6(2) to 6(5) apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 6(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to SSE notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (12) at all times.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that SSE retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

Retained apparatus: protection of SSE as electricity undertaker – overhead lines

9.—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 6(2) (removal of apparatus) the undertaker must submit to SSE a plan and seek from SSE details of the underground extent of their electricity tower foundations.

(2) The plan to be submitted under sub-paragraph (1) must show—

- (a) the exact position of the specified work;
- (b) the level at which the specified work is proposed to be constructed or renewed;
- (c) the manner of the construction or renewal of the specified work including details of excavation and positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) details of any ground monitoring scheme if required.

(3) In relation to any works which will or may be situated on, over, under or within 15 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must include a method statement which must, in addition to the matters set out in sub-paragraph (2)—

- (a) describe details of any cable trench design including route, dimensions and clearance to pylon foundations;
- (b) demonstrate that pylon foundations will not be affected prior to, during and post construction;
- (c) describe details of load bearing capacities of trenches;
- (d) describe details of cable installation methodology, including access arrangements, jointing bays and backfill methodology;
- (e) provide a written management plan for high voltage hazard during construction and on-going maintenance of the cable route;

- (f) provide written details of the operations and maintenance regime for the cable, including frequency and method of access;
 - (g) assess earth rise potential if reasonably required by SSE's engineers; and
 - (h) provide evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.
- (4) The undertaker must not commence any works requiring the submission of a plan under sub-paragraph (1) until SSE has given written approval of the plan so submitted.
- (5) Any approval of SSE required in relation to a plan submitted under sub-paragraph (1)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6); and
 - (b) must not be unreasonably withheld.
- (6) Any conditions made by SSE under sub-paragraph (5) must be notified to the undertaker within a period of 56 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.
- (7) In relation to a work requiring the submission of a plan under sub-paragraph (1), SSE may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (8) Works requiring the submission of a plan under sub-paragraph (1) must be executed only in accordance with the plan, as amended from time to time by agreement between the undertaker and SSE and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (9) or (10) by SSE for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and SSE is to be entitled to watch and inspect the execution of those works.
- (9) Where SSE require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to SSE's satisfaction prior to the commencement of works requiring the submission of a plan under sub-paragraph (1) and SSE must give 56 days' notice of such works from the date of submission of the plan (except in an emergency).
- (10) If SSE, in accordance with sub-paragraph (6) or (9) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 6(2) to (5) apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).
- (11) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to, and in respect of, the new plan.
- (12) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to SSE notice as soon as is reasonably practicable a plan of those works and must—
- (a) comply with conditions imposed under sub-paragraph (5)(a) insofar as is reasonably practicable in the circumstances; and
 - (b) comply with sub-paragraph (13) at all times.
- (13) As soon as reasonably practicable after any ground subsidence event, the undertaker must implement an appropriate ground mitigation scheme.

Expenses

10.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SSE on demand all charges, costs and expenses reasonably anticipated or incurred by SSE for, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule, including, without limitation—

- (a) any costs reasonably incurred by, or compensation properly paid by, SSE in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including, without limitation, all costs (including professional fees) reasonably incurred by SSE as a consequence of SSE—

- (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 6(3) if it elects to do so; and/or
- (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SSE;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule provided these are directly related and proportionate to such works; and
- (g) any watching brief pursuant to sub-paragraph 8(6) or sub-paragraph 9(8).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 14 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to SSE by virtue of sub-paragraph (1) will be reduced by the amount of that excess, save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth, in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which, apart from this sub-paragraph would be payable to SSE in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Where SSE demands payment of reasonably anticipated charges, costs and expenses pursuant to sub-paragraph (1), SSE must provide the undertaker with an itemised invoice or claim detailing such charges, costs, and expenses reasonably anticipated to fall due within the following three months of such a demand. The undertaker shall pay the reasonably anticipated costs set out in the itemised invoice to SSE on demand in accordance with sub-paragraph (1). To the extent that this sum paid in advance has not been expended by SSE within six months after payment by the undertaker of that sum, the undertaker may demand the unspent balance remaining to be repaid by SSE and SSE shall repay that unspent balance within 30 days (unless otherwise agreed in writing between the parties).

Enactments and agreements

11. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SSE and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and SSE in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

12.—(1) Where in consequence of the proposed construction of any of the authorised works the undertaker or SSE requires the removal of apparatus under paragraph 6(2) or SSE makes requirements for the protection or alteration of apparatus under paragraphs 8 or 9, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of SSE's undertaking, and SSE shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt, whenever SSE's consent, agreement or approval is required in relation to plans, documents or other information submitted by SSE or the taking of action by SSE, it must not be unreasonably withheld or delayed.

Access

13. If in consequence of the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SSE in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SSE to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. Save for differences or disputes arising under paragraph 8 and paragraph 9 any difference or dispute arising between the undertaker and SSE under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SSE, be determined by arbitration in accordance with article 48 (arbitration) of the Order.

Notices

15. The plans submitted to SSE by the undertaker pursuant to paragraphs 8(1) and 9(1) must be sent to SSE at No. 1 Forbury Place, 43 Forbury Road, Reading, United Kingdom, RG1 3JH and at [REDACTED]@sse.com or such other address as SSE may from time to time appoint instead for that purpose and notify to the undertaker.

PART 5

FOR THE PROTECTION OF SOUTHERN GAS NETWORKS PLC AS GAS UNDERTAKER

Application

1. For the protection of SGN the following provisions will, unless otherwise agreed in writing between the undertaker and SGN, have effect.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of SGN to enable SGN to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by SGN for the purposes of gas distribution together with such other apparatus constructed pursuant to the Order that becomes operational apparatus of SGN for the purposes of

transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 and “commencement” is to be construed to have the same meaning;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by SGN (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for SGN’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SGN including retain, lay, construct, inspect, maintain, protect, use, access, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to SGN and which shall have been approved by SGN acting reasonably;

“rights” shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

“SGN” means Southern Gas Networks plc or its successors in title or successor bodies and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction, of any apparatus, the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus, the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise; and

“undertaker” means the undertaker as defined in article 2 of this Order.

On street apparatus

3.—(1) The provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SGN are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraph 6 (Removal of apparatus) and 7 (facilities and rights for alternative apparatus) of this Part of this Schedule shall apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing adopted public highway.

Apparatus of SGN in temporarily closed streets

4. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary closure of streets) SGN will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which, at the time of the stopping up or diversion, was in that highway subject to serving seven days' notice on the undertaker (save in cases of emergency).

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of SGN (such consent not to be unreasonably withheld or delayed) and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of SGN or any interruption in the supply of gas by SGN, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by SGN in making good such damage or restoring the supply and, subject to sub-paragraph (2), will pay reasonable compensation to SGN for—

- (a) any loss sustained by it; and
- (b) all claims, demands, proceedings, costs, damages and expenses which have been made or taken against or recovered from or incurred by SGN, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of SGN or its contractors or workmen; and SGN will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise with any third party is to be made by SGN, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Removal of apparatus

6.—(1) If, in consequence of the powers granted under this Order the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of SGN to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of SGN and in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to SGN advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order SGN reasonably needs to move or remove any of its apparatus), the undertaker must afford to SGN to its reasonable satisfaction (taking into account sub-paragraph 7(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SGN must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for SGN to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between SGN and the undertaker.

(5) SGN must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to, or procurement by, SGN of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to SGN to its reasonable satisfaction, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for SGN facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and SGN and must be no less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by SGN.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SGN under sub-paragraph 7(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SGN than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in SGN's opinion) then the terms and conditions to which those facilities and rights are subject will be referred to arbitration in accordance with paragraph 13 (arbitration) of this Part of this Schedule and the arbitrator is to make such provision for the payment of compensation by the undertaker to SGN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of SGN

8.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to SGN a plan and, if reasonably required by SGN, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to SGN under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(2) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until SGN has given written approval of the plan so submitted.

(3) Any approval of SGN required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld.

(4) In relation to any work to which sub-paragraphs (1) and/or (2) apply, SGN may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(5) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and SGN and in accordance with all conditions imposed under sub-paragraph (4)(a), and SGN will be entitled to watch and inspect the execution of those works.

(6) Any requirements made by SGN under sub-paragraph (5) must be notified to the undertaker within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(7) Where SGN requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature), such protective works, inclusive of any measures or schemes required and approved

as part of the plan approved pursuant to this paragraph, must be carried out to SGN's reasonable satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If SGN, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan. For the avoidance of doubt this does not apply where the undertaker submits a new plan to comply with requirements notified to the undertaker by SGN in accordance with sub-paragraph (5), subject always to sub-paragraph (3).

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works, but in that case it must give to SGN notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (12) at all times.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works, the undertaker must implement an appropriate ground mitigation scheme save that SGN retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 9.

(12) An approval of SGN required under sub-paragraphs (4) or (8) will be deemed to be granted 14 days after the expiry of the 56 day period if no response to the request for approval has been provided within that initial 56 day period.

Expenses

9.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SGN on demand all charges, costs and expenses incurred by SGN and all reasonably anticipated charges, costs and expenses incurred by SGN (on provision of evidence by SGN to justify their claim) in or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or rights or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including, without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by SGN in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) reasonably incurred by SGN as a consequence of SGN—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under sub-paragraph 6(3) if it elects to do so; and/or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SGN;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule, provided these are directly related and proportionate to such works; and
- (g) any watching brief pursuant to sub-paragraph 8(6),

provided that any charges, costs and expenses incurred under paragraphs (f) and (g) shall only be payable in the event they have been incurred by SGN within 24 months of completion of the authorised works.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 48 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this sub-paragraph, would be payable to SGN by virtue of sub-paragraph (1) will be reduced by the amount of that excess, save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth, in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to SGN in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Where SGN demands payment of reasonably anticipated charges, costs and expenses pursuant to sub-paragraph (1), SGN must provide the undertaker with an itemised invoice or claim detailing such charges, costs and expenses reasonably anticipated to fall due within the following three months of such a demand. The undertaker shall pay the reasonably anticipated costs set out in the itemised invoice to SGN on demand in accordance with sub-paragraph (1). To the extent that this sum paid in advance has not been expended by SGN within six months after payment by the undertaker of that sum, the undertaker may demand the unspent balance remaining to be repaid by SGN and SGN shall repay that unspent balance within 30 days (unless otherwise agreed in writing between the parties).

Enactments and agreements

10. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between SGN and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and SGN in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

11.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or SGN requires the removal of apparatus under sub-paragraph 6(2) or SGN makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker must co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of SGN's undertaking and SGN must co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SGN's consent, agreement or approval is required in relation to plans, documents or other information submitted by SGN or the taking of action by SGN, it must not be unreasonably withheld or delayed.

Access

12. If in consequence of an agreement reached between SGN and the undertaker or in accordance with the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by SGN in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable SGN to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

13. Save for differences or disputes arising under sub-paragraphs 6(2), 6(4), 7(1), 7(5) and paragraph 8 any difference or dispute arising between the undertaker and SGN under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and SGN, be determined by arbitration in accordance with article 48 (arbitration).

Notices

14. The plans submitted to SGN by the undertaker pursuant to sub-paragraph 8(1) must be sent to SGN at 1 Forbury Place, 43 Forbury Road, Reading, Berkshire RG1 3JH or such other address as SGN may from time to time appoint instead for that purpose and notify to the undertaker.

PART 6

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 20 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under—

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over, or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers of the Order.

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The undertaker must not exercise the powers conferred by-

- (a) article 3 (development consent etc. granted by the Order);
- (b) article 4 (power to maintain the authorised project);
- (c) article 13 (access to works);
- (d) article 17 (discharge of water);
- (e) article 19 (authority to survey and investigate the land);
- (f) article 23 (compulsory acquisition of land);
- (g) article 24 (time limit for exercise of authority to acquire land compulsorily or to take land temporarily);
- (h) article 25 (compulsory acquisition of rights and imposition of restrictive covenants);
- (i) article 31 (acquisition of subsoil or airspace only);
- (j) article 27 (power to override easements and other rights);
- (k) article 33 (temporary use of land for carrying out the authorised project);
- (l) article 34 (temporary use of land for maintaining the authorised project);
- (m) article 35 (compulsory acquisition of land – incorporation of the mineral code)
- (n) article 36 (statutory undertakers);
- (o) article 44 (felling or lopping of trees or shrubs);
- (p) article 45 (trees subject to tree preservation orders);
- (q) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- (r) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (s) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (t) any powers in respect of the temporary possession of land under the Neighbourhood Planning Act 2017; or

- (u) other provisions where the exercise of the powers under that provision would impact on railway property; in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

5.—(1) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(2) The undertaker must not exercise the powers conferred by sections 217 or 272 of the 1990 Act, article 36 (statutory undertakers land), article 27 (power to override easements and other rights) or article 26 (private rights over land), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(3) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(6) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

6.—(1) The undertaker must before commencing construction of any specified work, supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

7.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(3) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(4) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

8. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

9. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

10.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a), provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

11. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and

lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

12.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development, the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker’s apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail’s apparatus in the investigation of such EMI;

- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
 - (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.
- (8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—
- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
 - (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.
- (9) To the extent that it would not otherwise do so, paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.
- (10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.
- (11) In relation to any dispute arising under this paragraph the reference in article 48 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.
- 13.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.
- 14.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.
- 15.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.
- 16.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 54 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—
- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or
 - (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
 - (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
 - (d) in respect of an damage caused to or additional maintenance required to railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
 - (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission and the fact that any act or

thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from liability under the provisions of this sub-paragraph. .

(3) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(4) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(7) In this paragraph—

“the relevant costs” means the costs, losses and expenses (but excluding loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

17. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

18. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

19. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

20. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

21. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 5 (benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;

- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

22. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 51 (certification of plans and documents etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

23. In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 11) the provisions of article 48 (Arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

PART 7

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc

1.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Except where expressly amended by the Order the operation of the powers and duties of national Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 which shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

2.—(1) Where the terms defined in article 2 (*interpretation*) of this Order are inconsistent with subparagraph (2) the latter prevail.

(2) In this Part of this Schedule—

“as built information” means one electronic copy of the following information—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information as is reasonably required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's *Asset Data Management Manual* as is in operation at the relevant time.

“the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;

“the cash surety” means the sum agreed between the undertaker and National Highways;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“detailed design information” means details of the following where applicable to the specified works—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 534 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) regime of California Bearing Ratio testing;
- (k) electrical work for road lighting, traffic signs and signals;
- (l) motorway communications as required by DMRB;
- (m) highway structures and any required structural approval in principle;
- (n) landscaping;
- (o) proposed departures from DMRB standards;
- (p) walking, cycling and horse riding assessment and review report;
- (q) stage 1 and stage 2 road safety audits and exceptions agreed;
- (r) utilities diversions;
- (s) topographical survey;
- (t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (u) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (v) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 10;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the specified works required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 8 when it considers the specified works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

“specified works” means Work No. 13 in so far as that work affects the strategic road network so much of any work, including highways works and signalisation, authorised by this Order including any maintenance of that work, as is undertaken on, in, under or over the strategic road network for which National Highways is the highway authority;

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on over or under the highway; and

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991.

General

3. For the purposes of any approvals required under this Part of Schedule [10] the undertaker shall liaise directly with National Highways.

4. Notwithstanding the limits of deviation permitted pursuant of this Order, no works in carrying out, maintaining or diverting the specified works may be carried out under the strategic road network at a distance within 4 metres of the lowest point of the ground.

5. References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

6.—If the undertaker proposes to carry out works to the strategic road network that are outside of the Order limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of these works prior to the commencement of those works.

Prior approvals and security

7.—(1) The specified works must not commence until—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
- (b) the programme of works has been approved by National Highways;
- (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);
 - (ii) details of the proposed road space bookings;
 - (iii) the identity and suitability of the contractor and nominated persons;

- (iv) a process for stakeholder liaison; and
 - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding;
 - (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
 - (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(iv) above;
 - (f) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and
 - (g) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.
- (2) The undertaker must not exercise—
- (a) article 4 (power to maintain the authorised development);
 - (b) article 9 (street works);
 - (c) article 11 (temporary closure of streets);
 - (d) article 17 (discharge of water);
 - (e) article 18 (protective works to buildings);
 - (f) article 19 (authority to survey and investigate the land);
 - (g) article 23 (compulsory acquisition of land);
 - (h) article 25 (compulsory acquisition of rights);
 - (i) article 33 (temporary use of land for carrying out the authorised development);
 - (j) article 34 temporary use of land for maintaining the authorised development); or
 - (k) article 44 (felling or lopping trees) of this Order

over any part of the strategic road network without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways’ approval.

(3) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraphs (1) or (2).

(4) Any approval of National Highways required under this paragraph—

- (a) must not be unreasonably withheld;
- (b) must be given in writing; and
- (c) may be subject to any conditions as National Highways considers necessary.

(5) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request along with collateral warranties in a form agreed by National Highways.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 7(1) of this Part.

Construction of the specified works

8.—(1) The undertaker must give National Highways 28 days’ notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 8(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works), together with all other relevant standards as required by National Highways to include, inter alia, all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways (acting reasonably); and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same.

(4) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works for the purposes of inspection and supervision of the specified works.

(5) If any part of the specified works is constructed—

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the reasonable satisfaction of National Highways.

(6) If during the carrying out of the specified works the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(7) If within 28 days on which a notice under sub-paragraph (4) or sub-paragraph (5) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by national Highways in so doing, such sum to be payable within 30 days of demand.

(8) Nothing in this Part of the Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in doing so,

(9) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway must be constructed to the satisfaction of National Highways.

(10) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 6(1)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

9.—(1) The undertaker must reimburse National Highways a sum equal to the whole of any reasonable costs and expenses which National Highways incurs (including costs and expenses for using internal or external staff) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise uncured under this Part, including—

- (a) the checking and approval of the information required under paragraph 6(1);
- (b) the supervision of the specified works;

- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all legal and administrative costs and disbursements reasonably incurred by National Highways in connection with the specified works and sub-paragraphs (a)-(c); and
- (e) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) National Highways must give the undertaker a final account of the NH costs referred to in sub- paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 8(4).

(3) Within 28 days of the issue of the final account—

- (a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it; or
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(4) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate

10.—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways prior to reopening the strategic road network.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the specified works; and
- (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

- (a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;
- (b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph 10(3)(b) have been completed to the satisfaction of National Highways;
- (c) the as built information has been provided to National Highways; and
- (d) National Highways must issue the provisional certificate.

(5) On the issue of the provisional certificate the bond sum shall be reduced to 20% of the total bond sum save insofar as any claim or claims have been made against the bond before the date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.

(6) The undertaker must submit a stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

Opening

11.—The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date.

Final condition survey

12.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 10(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to paragraph 10(1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to paragraph 10(1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

Defects Period

13.—(1) The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales-

- (a) In respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);
- (b) In respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and
- (c) In respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the expiry of the defects period National Highways has the responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final Certificate

14.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the strategic road network; and
 - (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.
- (3) The undertaker must carry out such works notified to it pursuant to sub-paragraph 11(2).
- (4) When National Highways is satisfied that—

- (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph 12(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and
- (b) the NH costs have been paid to National Highways in full,

National Highways must issue the final certificate after which the bond shall be released in full.

(5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.

Security

15.—(1) The specified works must not commence until-

- (a) The undertaker procures that the specified wrks are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and
- (b) The undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph (9) or to carry out works the need for which arises from a breach of one or more of the obligations oof the undertaker under the provisions of the Part of this Schedule.

Insurance

16.—Prior to the commencement of the specified works the undertaker must effect the public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

17.—The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

18.—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph (11) shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

19.—(1) The undertaker must not under the powers of this Order:

- (a) acquire or use land forming part of;
- (b) acquire new or existing rights over; or
- (c) seek to impose or extinguish any restrictive covenants over;

any of the strategic road network, or extinguish any existing rights of National Highways in respect of any third party property, except with the consent of National Highways following written request to legalserviceteam@nationalhighways.co.uk

Expert Determination

20.—(1) Article 48 (*arbitration*) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48 (*arbitration*).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

SCHEDULE 11

Article 41

DEEMED MARINE LICENCE UNDER THE 2009 ACT—GENERATION ASSETS

PART 1

LICENSED MARINE ACTIVITIES

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004(a);

“the 2008 Act” means the Planning Act 2008(b);

“the 2009 Act” means the Marine and Coastal Access Act 2009(c);

(a) 2004 c. 20.
(b) 2008 c. 29.
(c) 2009 c. 23.

“array area” means that part of the offshore Order limits in which Work Nos. 1 and 2 may be undertaken as shown on the offshore works plan;

“array cable” means the network of offshore subsea cable circuits comprising Work No. 2 connecting the wind turbine generators in Work No. 1 to each other and to the offshore substations authorised pursuant to licence 2 (transmission);

“array periphery” means the outermost edge of the infrastructure to be constructed as Work No. 1 as described in Part 1 of Schedule 1 (authorised development) and identified in the design plan to be approved pursuant to condition 11 of the deemed marine licences;

“authorised deposits” means the substances and articles specified in paragraph 4 of Part 1 of this licence;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 of the Order and any other development authorised by this Order that is development within the meaning of section 32 (meaning of “development”) of the 2008 Act;

“authorised scheme” means Work Nos. 1 and 2 together with any ancillary works described in paragraph 3 of Part 1 of this licence or any part of those works;

“buoy” means any floating device used for navigational purposes or measurement purposes including LiDAR buoys, wave buoys and guard buoys;

“cable crossings” means the crossing of existing sub-sea transmission cables or pipelines or other existing infrastructure by the array cables authorised by the Order together with physical protection measures including cable protection;

“cable protection” means measures for the protection of cable circuits from physical damage and exposure including but not limited to concrete mattresses and/or rock placement, bagged solutions filled with stone, rock or gravel, grout, concrete or other materials, and protective shells or sheaths;

“commence” means the first carrying out of any licensed marine activities or any part of the authorised scheme authorised by this marine licence, save for operations consisting of pre-construction surveys and monitoring approved under this licence and “commenced” and “commencement” must be construed accordingly;

“condition” means a condition in Part 2 of this licence;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions;

“draft piling marine mammal mitigation protocol” means the document certified as the draft piling marine mammal mitigation protocol by the Secretary of State under article 51 of the Order;

“draft UXO marine mammal mitigation protocol” means the document certified as the draft UXO marine mammal mitigation protocol by the Secretary of State under article 51 of the Order;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of Part 4 (marine licensing) of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order article 51 (certification of plans and documents etc);

“flow energy dissipation devices” means solutions that dissipate flow energy and entrap sediment, and including options such as frond mats, mats of large, linked hoops, and structures covered with long spikes;

“in-principle sensitive features plan” means the document certified as the in principle sensitive features plan by the Secretary of State for the purposes of the Order under article 51;

“intrusive activities” means offshore activities including anchoring of vessels, jacking up of vessels, depositing soil and seabed clearance;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“licence 2 (transmission)” means the licence set out in Schedule 12 (deemed licence under the 2009 Act – transmission assets) of the Order;

“licensed activities” means the activities specified in Part 1 of this licence;

“LiDAR” means the remote sensing method which uses light detection and ranging;

“maintain” includes inspect and survey, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace, to the extent assessed in the environmental statement; and derivatives of “maintain” must be construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence or any successor in function;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“monopile foundation” means a metal pile, typically cylindrical, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“multileg foundation” means a lattice type structure constructed of steel, which may include scour protection and additional equipment such as, J-tubes, corrosion protection systems and access platforms;

“the offshore in-principle monitoring plan” means the document certified as the offshore in-principle monitoring plan by the Secretary of State for the purposes of the Order under article 51;

“the offshore Order limits” means that part of the Order limits defined by the offshore Order limits and grid coordinates plan and set out in table 1 in Part 1 of Schedule 1 to the Order;

“the offshore Order limits and grid coordinates plan” means the plan certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of the Order under article 51;

“offshore substation” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks containing—

- (a) electrical equipment required to switch, transform, convert electricity generated at the wind turbine generators to a higher voltage; and
- (b) housing accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or wind turbine generators;

“offshore works plan” means the plan certified as the offshore works plan by the Secretary of State pursuant to article 51 of the Order;

“Order” means the Rampion 2 Offshore Wind Farm Order 20xx;

“outline cable burial risk assessment” means the document certified as the outline cable burial risk assessment by the Secretary of State for the purposes of this Order under article 51;

“outline cable specification and installation plan” means the document certified as the outline cable specification and installation plan by the Secretary of State for the purposes of this Order under article 51;

“outline diver communications plan” means the document certified as the outline diver communications plan by the Secretary of State for the purposes of this Order under article 51;

“outline fisheries liaison and co-existence plan” means the document certified as the outline fisheries liaison and co-existence plan by the Secretary of State for the purposes of the Order under article 51;

“outline marine written scheme of investigation” means the document certified as the outline offshore written scheme of investigation by the Secretary of State for the purpose of the Order under article 51;

“outline operation and maintenance plan” means the document certified as the outline operation and maintenance plan by the Secretary of State for the purposes of this Order under article 51;

“outline project environmental management plan” means the document certified as the outline offshore project environmental management plan by the Secretary of State for the purpose of the Order under article 51;

“outline scour protection and cable protection plan” means the plan or plans certified as the outline scour protection and cable protection plan by the Secretary of State for the purposes of this Order under article 51;

“pin piles” means cylindrical metal piles driven and/or drilled into the seabed to secure multileg foundations;

“scour protection” means measures to prevent loss of seabed sediment around any structure placed in or on the seabed using methods including rock or gravel placement, concrete mattresses, flow energy dissipation devices or bagged solutions;

“statutory historic body” means the Historic Buildings and Monuments Commission for England or its successor in function;

“statutory nature conservation body” means the appropriate nature conservation body as defined in regulation 5 of the Conservation of Habitats and Species Regulations 2017;

“suction bucket” means a steel cylindrical structure attached to the legs of a multileg foundation which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“UXO” means unexploded ordnance;

“undertaker” means Rampion Extension Development Limited or such other person to whom the benefit of this licence is transferred pursuant to the terms of article 5 (benefit of the Order) of the Rampion 2 Offshore Windfarm Order 20xx;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“wind farm separation zones” means those parts of the array area within which Work No. 1. and Work No. 3(a) as permitted pursuant to licence 2 (generation) may not be constructed as shown on the offshore works plan;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle, transition pieces and ancillary electrical and other equipment which may include J-tube(s), access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation or transition piece; and

“Working in Proximity to Wildlife in the Marine Environment Protocol” means the document certified as the Working in Proximity to Wildlife in the Marine Environment Protocol by the Secretary of State for the purpose of this Order under article 51.

(3) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(4) Unless otherwise indicated—

(a) all times are taken to be Greenwich Mean Time (GMT); and

(b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(5) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

(a) Marine Management Organisation

Marine Licensing Team

Lancaster House Hampshire Court

Newcastle Business Park

Newcastle upon Tyne

NE4 7YH

Tel: 0300 123 1032;

(b) Marine Management Organisation (local office)

Shoreham office

Pilots' Watch House

Basin Road South

Portslade

West Sussex

- BN41 1WD;
- (c) Trinity House
Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;
- (d) The United Kingdom Hydrographic Office
Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;
- (e) Maritime and Coastguard Agency
UK Technical Services Navigation
Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 020 3817 2554;
- (f) Centre for Environment, Fisheries and Aquaculture Science
Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244;
- (g) Natural England
4th Floor
Foss House
1-2 Peasholme Green
York
YO1 7PX
Tel: 0300 060 4911;
- (h) Historic England
4th Floor, Cannon Bridge House
25 Dowgate Hill
London
EC4R 2YA

Details of licensed marine activities

2. Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act—

- (a) the deposit at sea within the offshore Order limits of the substances and articles specified in paragraph 4 below;

- (b) the disposal of up to 2,568,500 cubic metres of inert material of natural origin and/or dredged material produced during construction drilling or seabed preparation for foundation works comprising Work No. 1, other seabed and preparation and array cable installation works comprising Work No. 2 and the maintenance of such works within the part of the offshore Order limits comprising the array area and provided that such quantity of material permitted to be disposed must take account of and include material disposed of in the array area during the carrying out and maintenance of Work No. 3 as permitted pursuant to licence 2 (transmission);
- (c) the construction of works in or over the sea and/or on or under the sea bed;
- (d) dredging for the purposes of seabed preparation for foundation works and/or electrical circuit works;
- (e) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; and
- (f) site clearance and preparation works including debris removal, levelling, boulder clearance works either by displacement ploughing or subsea grab technique or any other equivalent method and removal of static fishing equipment.

3.—(1) Such activities are authorised in relation to the construction, maintenance and operation of the following in the locations shown on the offshore works plans—

- (a) Work No. 1 – an offshore wind turbine generating station which is to have a gross electrical output of over 100 megawatts and is to comprise no more than 90 wind turbine generators, with each wind turbine fixed to the seabed by either monopile foundation or multileg foundation and including a connection to the subsea cable circuits comprising Work no. 2(a) or 2(b).
- (b) Work No. 2—
 - (i) a network of subsea cable circuits between the wind turbine generators comprising work No. 1;
 - (ii) a network of subsea cable circuits between the wind turbine generators comprising Work No. 1 and the offshore substations which may be constructed under licence 2 (transmission) as Work No. 3(a), including one or more cable crossings; and
 - (iii) connections into the offshore substations comprising Work No. 3(a) which may be constructed under licence 2 (transmission).

(2) In connection with such Work No. 1 and Work No. 2 and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised scheme and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection;
- (c) dredging;
- (d) the removal of material from the seabed and the disposal of inert material of natural origin within the Order limits produced during construction drilling, seabed preparation for foundation works, array cable installation preparation such as sandwave clearance, boulder clearance, and pre-trenching;
- (e) removal of static fishing equipment; and
- (f) such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised project and which are within the scope of the environmental impact assessment recorded in the environmental statement.

(3) In connection with such Work Nos. 1 and 2 ancillary works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme; and
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works.

4. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;

- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic material;
- (f) material extracted from within the offshore Order limits during construction drilling or seabed preparation for foundation works seabed preparation works and cable installation; and
- (g) marine coatings, other chemicals and timber.

5.—(1) The grid coordinates for that part of the offshore Order limits where those parts of the authorised project comprising Work No. 1 and 2(c) may be carried out as shown on the offshore works plans are specified below—

<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>
1	50° 39' 1.7938"	-000° 36' 8.7262"	71	50° 39' 27.3702"	-000° 30' 22.4457"
2	50° 39' 24.3939"	-000° 33' 40.8674"	72	50° 39' 27.5636"	-000° 30' 20.9233"
3	50° 39' 38.5128"	-000° 32' 8.3008"	73	50° 39' 27.7675"	-000° 30' 19.3961"
4	50° 39' 38.0150"	-000° 32' 7.9507"	74	50° 39' 27.9818"	-000° 30' 17.8647"
5	50° 39' 37.5445"	-000° 32' 7.5894"	75	50° 39' 28.2064"	-000° 30' 16.3295"
6	50° 39' 37.0814"	-000° 32' 7.2019"	76	50° 39' 28.4413"	-000° 30' 14.7911"
7	50° 39' 36.6259"	-000° 32' 6.7883"	77	50° 39' 28.6863"	-000° 30' 13.2497"
8	50° 39' 36.1781"	-000° 32' 6.3487"	78	50° 39' 28.9415"	-000° 30' 11.7061"
9	50° 39' 35.7382"	-000° 32' 5.8833"	79	50° 39' 29.2067"	-000° 30' 10.1605"
10	50° 39' 35.3062"	-000° 32' 5.3922"	80	50° 39' 29.4819"	-000° 30' 8.6135"
11	50° 39' 34.8823"	-000° 32' 4.8755"	81	50° 39' 29.7669"	-000° 30' 7.0655"
12	50° 39' 34.4667"	-000° 32' 4.3334"	82	50° 39' 30.0618"	-000° 30' 5.5171"
13	50° 39' 34.0594"	-000° 32' 3.7661"	83	50° 39' 30.3663"	-000° 30' 3.9686"
14	50° 39' 33.6606"	-000° 32' 3.1737"	84	50° 39' 30.6804"	-000° 30' 2.4206"
15	50° 39' 33.2705"	-000° 32' 2.5565"	85	50° 39' 31.0041"	-000° 30' 0.8735"
16	50° 39' 32.8890"	-000° 32' 1.9146"	86	50° 39' 31.3371"	-000° 29' 59.3278"
17	50° 39' 32.5164"	-000° 32' 1.2482"	87	50° 39' 31.6795"	-000° 29' 57.7840"
18	50° 39' 32.1528"	-000° 32' 0.5575"	88	50° 39' 32.0310"	-000° 29' 56.2425"
19	50° 39' 31.7982"	-000° 31' 59.8427"	89	50° 39' 32.3917"	-000° 29' 54.7039"
20	50° 39' 31.4528"	-000° 31' 59.1040"	90	50° 39' 32.7613"	-000° 29' 53.1685"

21	50° 39' 31.1167"	-000° 31' 58.3418"	91	50° 39' 33.1398"	-000° 29' 51.6369"
22	50° 39' 30.7900"	-000° 31' 57.5561"	92	50° 39' 33.5271"	-000° 29' 50.1095"
23	50° 39' 30.4727"	-000° 31' 56.7473"	93	50° 39' 33.9230"	-000° 29' 48.5867"
24	50° 39' 30.1651"	-000° 31' 55.9155"	94	50° 39' 34.3275"	-000° 29' 47.0691"
25	50° 39' 29.8671"	-000° 31' 55.0611"	95	50° 39' 34.7403"	-000° 29' 45.5571"
26	50° 39' 29.5788"	-000° 31' 54.1843"	96	50° 39' 35.1614"	-000° 29' 44.0512"
27	50° 39' 29.3005"	-000° 31' 53.2853"	97	50° 39' 35.5907"	-000° 29' 42.5518"
28	50° 39' 29.0320"	-000° 31' 52.3645"	98	50° 39' 36.0279"	-000° 29' 41.0593"
29	50° 39' 28.7736"	-000° 31' 51.4221"	99	50° 39' 36.4731"	-000° 29' 39.5743"
30	50° 39' 28.5253"	-000° 31' 50.4584"	100	50° 39' 36.9260"	-000° 29' 38.0972"
31	50° 39' 28.2871"	-000° 31' 49.4737"	101	50° 39' 37.3865"	-000° 29' 36.6284"
32	50° 39' 28.0592"	-000° 31' 48.4683"	102	50° 39' 37.8544"	-000° 29' 35.1684"
33	50° 39' 27.8416"	-000° 31' 47.4425"	103	50° 39' 38.3297"	-000° 29' 33.7176"
34	50° 39' 27.6344"	-000° 31' 46.3966"	104	50° 40' 22.3750"	-000° 27' 19.7685"
35	50° 39' 27.4376"	-000° 31' 45.3309"	105	50° 40' 53.6018"	-000° 23' 53.4563"
36	50° 39' 27.2513"	-000° 31' 44.2459"	106	50° 37' 23.6536"	-000° 27' 24.4299"
37	50° 39' 27.0756"	-000° 31' 43.1417"	107	50° 36' 38.8171"	-000° 27' 24.4229"
38	50° 39' 26.9105"	-000° 31' 42.0187"	108	50° 36' 16.5551"	-000° 29' 46.1531"
39	50° 39' 26.7561"	-000° 31' 40.8773"	109	50° 36' 12.3786"	-000° 30' 12.7043"
40	50° 39' 26.6123"	-000° 31' 39.7178"	110	50° 35' 33.2206"	-000° 34' 21.0588"
41	50° 39' 26.4793"	-000° 31' 38.5406"	111	50° 35' 29.7384"	-000° 34' 43.2949"
42	50° 39' 26.3572"	-000° 31' 37.3460"	112	50° 35' 11.5476"	-000° 36' 40.5405"
43	50° 39' 26.2458"	-000° 31' 36.1344"	113	50° 35' 8.6938"	-000° 36' 58.9128"
44	50° 39' 26.1453"	-000° 31' 34.9062"	114	50° 35' 8.5860"	-000° 37' 35.2466"
45	50° 39' 26.0557"	-000° 31' 33.6617"	115	50° 35' 15.1952"	-000° 37' 36.0920"
46	50° 39' 25.9770"	-000° 31' 32.4013"	116	50° 35' 17.9985"	-000° 37' 36.4578"

47	50° 39' 25.9093"	-000° 31' 31.1254"	117	50° 35' 18.0869"	-000° 37' 36.4693"
48	50° 39' 25.8526"	-000° 31' 29.8344"	118	50° 35' 25.0537"	-000° 37' 37.3783"
49	50° 39' 25.8068"	-000° 31' 28.5286"	119	50° 35' 31.1113"	-000° 37' 38.1688"
50	50° 39' 25.7720"	-000° 31' 27.2086"	120	50° 35' 52.0407"	-000° 37' 40.9002"
51	50° 39' 25.7482"	-000° 31' 25.8746"	121	50° 36' 22.3039"	-000° 37' 44.8508"
52	50° 39' 25.7355"	-000° 31' 24.5271"	122	50° 36' 24.7136"	-000° 37' 45.1655"
53	50° 39' 25.7337"	-000° 31' 23.1665"	123	50° 36' 36.3272"	-000° 37' 46.6819"
54	50° 39' 25.7265"	-000° 30' 47.1665"	124	50° 37' 8.9157"	-000° 37' 51.3889"
55	50° 39' 25.7358"	-000° 30' 45.7932"	125	50° 37' 14.4423"	-000° 37' 52.1326"
56	50° 39' 25.7561"	-000° 30' 44.4076"	126	50° 37' 26.2596"	-000° 37' 53.7231"
57	50° 39' 25.7874"	-000° 30' 43.0102"	127	50° 37' 33.2783"	-000° 37' 54.6678"
58	50° 39' 25.8297"	-000° 30' 41.6014"	128	50° 37' 47.0466"	-000° 37' 56.5213"
59	50° 39' 25.8830"	-000° 30' 40.1815"	129	50° 37' 52.4650"	-000° 37' 57.2507"
60	50° 39' 25.9472"	-000° 30' 38.7511"	130	50° 37' 55.7250"	-000° 37' 57.5509"
61	50° 39' 26.0225"	-000° 30' 37.3106"	131	50° 39' 1.7938"	-000° 36' 8.7262"
62	50° 39' 26.1086"	-000° 30' 35.8603"	132	50° 35' 26.4347"	-000° 14' 9.0079"
63	50° 39' 26.2056"	-000° 30' 34.4008"	133	50° 35' 43.9510"	-000° 20' 7.3806"
64	50° 39' 26.3136"	-000° 30' 32.9325"	134	50° 36' 55.0393"	-000° 20' 30.4937"
65	50° 39' 26.4323"	-000° 30' 31.4559"	135	50° 38' 29.1370"	-000° 10' 42.0738"
66	50° 39' 26.5619"	-000° 30' 29.9713"	136	50° 36' 40.5733"	-000° 10' 7.2790"
67	50° 39' 26.7022"	-000° 30' 28.4793"	137	50° 35' 56.8348"	-000° 12' 29.9698"
68	50° 39' 26.8532"	-000° 30' 26.9803"	138	50° 35' 46.1905"	-000° 13' 4.6597"
69	50° 39' 27.0149"	-000° 30' 25.4747"	139	50° 35' 26.4347"	-000° 14' 9.0079"
70	50° 39' 27.1873"	-000° 30' 23.9630"	140		

(2) The grid coordinates for that part of the offshore Order limits where those parts of the authorised project comprising Work No. 2(a) and 2(b) may be carried out as shown on the offshore works plans are specified below—

<i>Point</i>	<i>Longitude</i>	<i>Latitude</i>	<i>Point</i>	<i>Longitude</i>	<i>Latitude</i>

1	50° 39' 52.3821"	-000° 30' 37.2248"	48	50° 39' 22.9375"	-000° 11' 0.1216"
2	50° 41' 11.3500"	-000° 21' 55.8599"	49	50° 39' 22.9921"	-000° 10' 59.8545"
3	50° 39' 53.9451"	-000° 21' 30.9561"	50	50° 39' 23.0026"	-000° 10' 59.8032"
4	50° 38' 43.2945"	-000° 21' 8.2445"	51	50° 39' 23.0301"	-000° 10' 59.6688"
5	50° 38' 11.9503"	-000° 20' 58.1743"	52	50° 39' 23.0417"	-000° 10' 59.6121"
6	50° 37' 42.3197"	-000° 20' 48.6579"	53	50° 39' 23.0889"	-000° 10' 59.3814"
7	50° 37' 32.8206"	-000° 20' 45.6028"	54	50° 36' 40.5733"	-000° 10' 7.2790"
8	50° 37' 32.7858"	-000° 20' 45.5916"	55	50° 35' 56.8348"	-000° 12' 29.9698"
9	50° 37' 32.7633"	-000° 20' 45.5843"	56	50° 35' 46.1905"	-000° 13' 4.6597"
10	50° 37' 22.7987"	-000° 20' 42.3409"	57	50° 35' 44.4347"	-000° 14' 9.0079"
11	50° 38' 31.7775"	-000° 16' 26.9705"	58	50° 35' 44.1096"	-000° 20' 10.6548"
12	50° 38' 13.3226"	-000° 16' 17.0707"	59	50° 36' 25.6547"	-000° 21' 2.8378"
13	50° 38' 41.3993"	-000° 14' 22.9538"	60	50° 36' 27.9442"	-000° 21' 5.7145"
14	50° 39' 19.2087"	-000° 11' 18.3535"	61	50° 36' 33.7315"	-000° 21' 12.9866"
15	50° 39' 19.3373"	-000° 11' 17.7245"	62	50° 36' 36.0255"	-000° 21' 15.9940"
16	50° 39' 19.5025"	-000° 11' 16.9170"	63	50° 36' 42.3252"	-000° 21' 24.2532"
17	50° 39' 19.6186"	-000° 11' 16.3492"	64	50° 36' 50.0795"	-000° 21' 34.4205"
18	50° 39' 19.6908"	-000° 11' 15.9965"	65	50° 37' 0.5900"	-000° 21' 48.2036"
19	50° 39' 19.7648"	-000° 11' 15.6344"	66	50° 37' 2.6269"	-000° 21' 50.8749"
20	50° 39' 20.4130"	-000° 11' 12.4655"	67	50° 37' 26.1929"	-000° 22' 21.7880"
21	50° 39' 20.4164"	-000° 11' 12.4490"	68	50° 37' 27.1480"	-000° 22' 23.0411"
22	50° 39' 20.6912"	-000° 11' 11.1054"	69	50° 36' 38.8171"	-000° 27' 24.4229"
23	50° 39' 20.6985"	-000° 11' 11.0695"	70	50° 36' 16.5551"	-000° 29' 46.1531"
24	50° 39' 20.7558"	-000° 11' 10.7896"	71	50° 36' 12.3786"	-000° 30' 12.7043"
25	50° 39' 20.7809"	-000° 11' 10.6668"	72	50° 35' 33.2206"	-000° 34' 21.0588"
26	50° 39' 20.8160"	-000° 11' 10.4952"	73	50° 35' 29.7384"	-000° 34' 43.2949"

27	50° 39' 20.8413"	-000° 11' 10.3711"	74	50° 35' 11.5476"	-000° 36' 40.5405"
28	50° 39' 20.8647"	-000° 11' 10.2572"	75	50° 35' 8.6938"	-000° 36' 58.9128"
29	50° 39' 20.8985"	-000° 11' 10.0916"	76	50° 35' 8.5860"	-000° 37' 35.2466"
30	50° 39' 20.9320"	-000° 11' 9.9280"	77	50° 35' 15.1952"	-000° 37' 36.0920"
31	50° 39' 20.9471"	-000° 11' 9.8539"	78	50° 35' 17.9985"	-000° 37' 36.4578"
32	50° 39' 20.9846"	-000° 11' 9.6706"	79	50° 35' 18.0869"	-000° 37' 36.4693"
33	50° 39' 21.0187"	-000° 11' 9.5038"	80	50° 35' 25.0537"	-000° 37' 37.3783"
34	50° 39' 21.0425"	-000° 11' 9.3875"	81	50° 35' 31.1113"	-000° 37' 38.1688"
35	50° 39' 21.0907"	-000° 11' 9.1519"	82	50° 35' 32.0407"	-000° 37' 40.9002"
36	50° 39' 21.1078"	-000° 11' 9.0682"	83	50° 36' 22.3039"	-000° 37' 44.8508"
37	50° 39' 21.1552"	-000° 11' 8.8368"	84	50° 36' 24.7136"	-000° 37' 45.1655"
38	50° 39' 21.1689"	-000° 11' 8.7697"	85	50° 36' 36.3272"	-000° 37' 46.6819"
39	50° 39' 21.1691"	-000° 11' 8.7686"	86	50° 37' 8.9157"	-000° 37' 51.3889"
40	50° 39' 21.2393"	-000° 11' 8.4254"	87	50° 37' 14.4423"	-000° 37' 52.1326"
41	50° 39' 21.2579"	-000° 11' 8.3344"	88	50° 37' 26.2596"	-000° 37' 53.7231"
42	50° 39' 21.2943"	-000° 11' 8.1562"	89	50° 37' 33.2783"	-000° 37' 54.6678"
43	50° 39' 21.3304"	-000° 11' 7.9801"	90	50° 37' 47.0466"	-000° 37' 56.5213"
44	50° 39' 21.3412"	-000° 11' 7.9272"	91	50° 37' 52.4650"	-000° 37' 57.2507"
45	50° 39' 22.1787"	-000° 11' 3.8321"	92	50° 37' 55.7250"	-000° 37' 57.5509"
46	50° 39' 22.8501"	-000° 11' 0.5488"	93	50° 39' 1.7938"	-000° 36' 8.7262"
47	50° 39' 22.8994"	-000° 11' 0.3078"	94	50° 39' 24.3939"	-000° 33' 40.8674"

6. This licence remains in force until the authorised project has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 (approval of decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of sections 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 5 (benefit of the Order) of the Order.

8. With respect to any condition which requires the authorised scheme or licensed activities to be carried out in accordance with the plans, protocols or statements approved under this licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. Any amendments to or variations from the approved plans, protocols or statements must be in accordance with the principles and assessments set out in the environmental statement and approval for an amendment or variation may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the MMO that the amendment or variation is unlikely to give rise to any materially worse environmental effects from those assessed in the environmental statement.

PART 2

CONDITIONS

Design parameters

1.—(1) The total number of wind turbine generators comprised in the authorised scheme must be no more than 90 having a total rotor swept area of no more than 4.45 square kilometres.

(2) Subject to sub-paragraph (3), each wind turbine generator forming part of the authorised scheme must have—

- (a) a height of no more than 325 metres when measured from LAT to the tip of the vertical blade;
- (b) a rotor diameter of no more than 295 metres;
- (c) a distance of no less than 22 metres from MHWS to the lowest point of the rotating blade; or
- (d) a distance of no less than 830 metres from the nearest wind turbine generator in all directions,

and the authorised scheme will comprise turbines of a uniform height and rotor diameter.

(3) The reference in sub-paragraph (2)(d) to the location of a wind turbine generator is a reference to the centre point of that wind turbine generator.

(4) Wind turbine generator foundation structures forming part of the authorised scheme must have either a monopile foundation, or multileg foundation.

(5) Wind turbine generator—

(a) multileg foundations employing pin piles forming part of the authorised scheme may have—

- (i) no more than 4 legs per foundation;
- (ii) no more than 4 pin piles per foundation; and
- (iii) a pin pile diameter of no greater than 4.5 metres;

(b) multileg foundations with suction bucket may have—

- (i) no more than 4 legs per wind turbine generator;
- (ii) a suction bucket diameter of no more than 15 metres; and
- (iii) a suction bucket penetration of no more than 25 metres; and

(c) monopile foundation forming part of the authorised scheme may have a diameter no greater than 13.5 metres.

(6) The total volume of scour protection for wind turbine generators (where necessary) must be no more than 1,215,000 cubic metres with a maximum footprint of 405,000 square metres.

2.—(1) The total length of the array cables comprising Work No. 2 must be no more than 250 kilometres.

(2) The total volume of cable protection comprising Work No 2 must be no more than 175,000 cubic metres with a maximum footprint of 300,000 square metres.

(3) The number of cable crossings comprising Work No. 2 must be no more than four unless otherwise agreed with the MMO.

(4) The maximum area impacted by cable crossings must be no more than 10,000 square metres.

(5) The total volume of cable protection for cable crossings must be no more than 20,000 cubic metres (pre- and post-lay).

(6) Any cable protection authorised under this licence must be deployed within 10 years from the commencement of the authorised scheme unless otherwise agreed in writing with the MMO.

(7) The array cables comprising Work Nos. 2 must be installed using one or more of the following installation methods: ploughing, trenching or jetting and are to be installed at a target burial depth of 1 metre below seabed surface.

Maintenance of the authorised scheme

3.—(1) No less than four months prior to the completion of construction of the authorised scheme the undertaker must submit to the MMO for approval an operations and maintenance plan which accords with the outline operations and maintenance plan.

(2) The undertaker may at any time maintain the authorised scheme, except to the extent that this licence or an agreement made under this licence provides otherwise. All operation and maintenance activities shall be carried out in accordance with the approved operations and maintenance plan unless otherwise agreed in writing between the undertaker and the MMO.

(3) No maintenance works whose likely effects are not assessed in the environmental statement may be carried out, unless otherwise approved by the MMO.

(4) Maintenance works include but are not limited to—

- (a) major wind turbine component or offshore substation platform replacement;
- (b) painting wind turbine generators or offshore substation platforms;
- (c) bird waste removal;
- (d) cable remedial burial;
- (e) array cable repairs;
- (f) access ladder replacement;
- (g) wind turbine generator anode replacement; and
- (h) J-tube repair/replacement.

(5) Where the MMO's approval is required under paragraph (3), approval may be given only where it has been demonstrated to the satisfaction of the MMO that the works for which approval is sought are unlikely to give rise to any materially worse effects from those assessed in the environmental statement.

Extension of time periods

4. Any time period given in this licence given to either the undertaker or the MMO may be extended with the written agreement of the other party.

Notifications and inspection

5.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with condition 15; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 15; and
- (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 15 are permitted to carry out the authorised scheme.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the undertaker's registered address;

- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the authorised scheme or any part thereof and within five days of the completion of the authorised scheme.

(7) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised scheme—

- (a) at least 14 days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
- (b) completion of construction of all offshore activities within five days thereof,

and confirmation of notification must be provided to the MMO within five days thereof.

(8) A notice to mariners must be issued at least 14 days prior to the commencement of the authorised scheme or any part thereof advising of the relevant start date and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO, MCA and UKHO within five days.

(9) Local notifications to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works (unless otherwise agreed in writing) and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under condition 11(1)(b). Copies of all notices must be provided to the MMO, MCA and UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office of the completion of construction (within 14 days) of the authorised scheme in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO and the MCA within five days.

(11) In case of damage to, or destruction or decay of, the authorised scheme or any part thereof excluding the exposure of cables the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, MCA, Trinity House, the Kingfisher Information Service of Seafish and the UK Hydrographic Office and issue a notice to mariners and regional fisheries contacts.

(12) In case of cable exposure on or above the seabed, the undertaker must within three days following identification by the undertaker notify mariners by issuing a notice to mariners, regional fisheries contacts and notify the Kingfisher Information Service of Seafish of the location of the exposure and copies of all such notices must be provided to the MMO, MCA, Trinity House and UKHO within five days.

Aids to navigation

6.—(1) The undertaker must during the whole period from commencement of the authorised scheme to completion of decommissioning exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must during the period from the start of construction of the authorised scheme to completion of decommissioning of the authorised scheme keep Trinity House, the MMO, MCA and UKHO informed of progress of the authorised scheme including the following—

- (a) notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within five days of completion of construction of the authorised scheme.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to condition 11(1)(o) using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the authorised scheme to completion of decommissioning of the authorised scheme notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of condition 5(11) or 5(12) are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

Colour of Structures

7.—(1) The undertaker must colour all structures yellow (colour code RAL 1023) from at least highest astronomical tide to a height directed by Trinity House, or must colour the structure as directed by Trinity House from time to time.

(2) Subject to sub-paragraph (1) above, unless the MMO otherwise directs, the undertaker must ensure that the remainder of the structures are painted light grey (colour code RAL 7035).

Aviation safety

8.—(1) The undertaker must exhibit such lights, with such shape, colour and character and at such times as are required by Air Navigation Order 2016(a) and or determined necessary for aviation safety following consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority. Lighting installed specifically to meet Ministry of Defence aviation safety requirements must remain operational for the life of the authorised scheme unless otherwise agreed with the Ministry of Defence.

(2) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, the Civil Aviation Authority, NATS (En Route) plc and the MMO, at least 14 days prior to the commencement of the authorised scheme, in writing of the following information—

- (a) the date of the commencement of construction of the authorised scheme;
- (b) the date any wind turbine generators are intended to be brought into use;
- (c) the maximum height of any construction equipment to be used;
- (d) the maximum heights of any wind turbine generator to be constructed; and
- (e) the latitude and longitude of each wind turbine generator and offshore substation to be constructed,

and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised scheme. Copies of such notifications must be provided to the MMO within five working days of the notification to the Defence Infrastructure Organisation Safeguarding.

(2) Within 14 days of the commencement of construction of the authorised scheme the undertaker must submit an operational lighting scheme for the lighting of structures above 60 metres in height to the Defence Infrastructure Organisation Safeguarding and the Civil Aviation Authority which must include the proposed intensity levels.

(3) The authorised scheme must not be commissioned unless and until the lighting scheme submitted pursuant to sub-paragraph (3) has been approved and implemented.

(4) The lights installed in accordance with paragraph (1) and (4) will be operated at the lowest permissible lighting intensity level.

Chemicals, drilling and debris

9.—(1) Unless otherwise agreed in writing by the MMO all chemicals and substances including paints and coatings used below the MHWS for the undertaking of the licensed activities must be approved in writing by the MMO prior to use. Submission for approval to the MMO must take place no later than ten weeks prior to use, unless otherwise agreed to by the MMO in writing.

(a) S.I. 2016.765

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The undertaker must ensure that only inert material of natural origin, drilling mud and dredged material, produced during the drilling installation of or seabed preparation for foundations, and sandwave clearance works is disposed of within the extent of the offshore Order limits. Any material of anthropogenic origin will be screened out and disposed of at an appropriate waste facility onshore. The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order by reference to the disposal site identifier agreed with the MMO, by submission of a disposal return by 15 February each year for the months August to January inclusive, and by 15 August each year for the months February to July inclusive.

(4) The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(5) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker must report the loss to the MMO Local Office within 48 hours and if the MMO reasonably considers, following consultation with the MCA and Trinity House, such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(6) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(7) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan approved under condition 11(1)(d)(i).

(8) All dropped objects must be reported to the MMO using the dropped object procedure form as soon as reasonably practicable and in any event within 24 hours following the undertaker becoming aware of an incident. On receipt of the dropped object procedure form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and on receipt of such surveys the MMO may require obstructions which are hazardous to other marine users to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

10.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

11.—(1) The authorised scheme or any part thereof must not commence until the following (insofar as relevant to that part) has been submitted to and approved in writing by the MMO, following consultation with (where relevant) Trinity House and the MCA—

- (a) a design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, which shows—
 - (i) the proposed location, including grid co-ordinates of the centre point of the proposed location for each wind turbine generator, offshore substation permitted pursuant to licence 2 (transmission) and for the array periphery and choice of foundation types and depths for all wind turbine generators;
 - (ii) the number, specifications (including lighting protection) and dimensions of the wind turbine generators;
 - (iii) the proposed length location and arrangement of the array cables comprising Work No. 2;
 - (iv) the dimensions of all monopile foundations or multileg foundations;

- (v) any exclusion zones/environmental micro-siting requirements due to marine heritage constraints, environmental constraints or difficult ground conditions discovered post approval under this condition 11 (pre-construction plans and documentation) and condition 16 (pre-construction surveys); and
- (vi) that the details set out in relation to (i) to (v) above do not prevent that part of the wind farm separation zone oriented north to south being open and navigable for all vessels and compliant with Marine Guidance Note (MGN) 654,

to ensure conformity with the description of Work Nos. 1 and 2 and compliance with conditions 1 to 3 above;

- (b) a construction programme to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works; and
 - (iii) an indicative written construction programme for all wind turbine generators and array cable installation works comprised Work Nos. 1 and 2 at paragraph 3 of Part 1 (licensed marine activities) of this Schedule (insofar as not shown in paragraph (ii) above),

unless otherwise agreed in writing with the MMO;

- (c) a construction method statement in accordance with the construction methods assessed in the environmental statement including details of—
 - (i) foundation installation methodology, including a dredging protocol, piling methods, including maximum proposed hammer energy, drilling methods and disposal of drill arisings and material extracted to include seabed preparation for foundation where relevant;
 - (ii) advisory safe passing distances for vessels around construction sites;
 - (iii) advisory exclusion zones during any piling activities;
 - (iv) array cable installation method including a dredging protocol array cable installation works and minimisation of direct and indirect seabed disturbance footprint for the array cable;
 - (v) any exclusion zones/environmental micro-siting requirements for cable routing;
 - (vi) contractors;
 - (vii) vessels and vessels transit corridors;
 - (viii) associated ancillary works;
 - (ix) guard vessels to be employed; and
 - (x) carbon measuring and reporting;
- (d) a project environment management plan which accords with the outline project environment management plan, which shall be submitted to the MMO at least six months prior to commencement of the authorised scheme or the relevant part thereof, to include details of—
 - (i) a marine pollution contingency plan which accords with the outline marine pollution contingency plan comprising part of the outline project environmental management plan, to address the risks, methods and procedures to deal with any spills and collision incidents arising from the authorised scheme in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) a marine biosecurity plan detailing how the risk of introduction and spread of invasive non-native species will be minimised; and
 - (iv) waste management and disposal arrangements;
- (e) a vessel traffic monitoring strategy which accords with the outline vessel traffic monitoring strategy comprising part of the offshore in-principle monitoring plan which shall include—
 - (i) vessel traffic monitoring by automatic identification system for the duration of the construction period;
 - (ii) post-construction vessel traffic monitoring by automatic identification system for the period of three consecutive years following the completion of construction of authorised scheme; and
 - (iii) submission of a report to the MMO, Trinity House and the MCA at the end of each year of the construction period and the following three years post-construction;

- (f) a vessel management plan including a code of conduct for vessel operators incorporating the Working in Proximity to Wildlife in the Marine Environment Protocol which shall apply, during both the construction and the operational lifetime of the authorised scheme;
- (g) a fisheries liaison and co-existence plan which accords with the outline fisheries and co-existence plan;
- (h) diver communication plan which accords with the outline diver communication plan;
- (i) a scour protection and cable protection plan which accords with the outline scour protection and cable protection plan providing details of the need, type, sources, quantity and installation methods for scour protection, which must be updated and resubmitted for approval if changes to it are proposed following array cable laying operations;
- (j) a monitoring plan which accords with the offshore in-principle monitoring plan and is to detail proposals for pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting;
- (k) a sensitive features mitigation plan which accords with the in principle sensitive features mitigation plan which shall be submitted to the MMO at least six months prior to commencement of the authorised scheme or the relevant part thereof and is to include spatial and temporal restrictions on piling activities;
- (l) in the event that driven or part-driven pile foundations are proposed to be used:
 - (i) the hammer energy used to drive or part-drive the pile foundations must not exceed:
 - (aa) 4,400kJ in respect of monopile foundations
 - (bb) 2,500kJ in respect of pin piles;
 - (ii) a piling marine mammal mitigation protocol which accords with the draft piling marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, including details of soft start procedures with specified duration periods following current best practice as advised by the relevant statutory nature conservation bodies;
- (m) a UXO marine mammal mitigation protocol which accords with the draft UXO marine mammal mitigation protocol;
- (n) a cable specification and installation plan which accords with the outline cable specification and installation plan, to include—
 - (i) technical specification of offshore cable circuits on or below the seabed, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
 - (ii) a sandwave and other seabed clearance plan for all designated sites affected, including details of the volumes of material to be dredged, timing of works, locations for disposal and monitoring proposals;
 - (iii) a detailed cable laying plan for the Order limits, incorporating a burial risk assessment which accords with the outline cable burial risk assessment, encompassing the identification of any cable protection that exceeds 5% of navigable depth referenced to Chart Datum and, in the event that any area of cable protection exceeding 5% of navigable depth is identified, details of any steps (to be determined following consultation with the MCA and Trinity House) to be taken to ensure existing and future safe navigation is not compromised or similar such assessment to ascertain suitable burial depths and cable laying techniques, including cable protection;
 - (iv) proposals for the volume and areas of cable protection to be used for each cable crossing (if any) and arrangements for crossing and proximity agreements to be put in place with existing subsea pipelines and cable operators; and
 - (v) proposals for monitoring array cables including cable protection during the operational lifetime of the authorised scheme which includes a risk-based approach to the management of unburied or shallow buried cables; and
- (o) an aid to navigation management plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of condition 6 (aids to navigation) from the commencement of construction of the authorised scheme to the completion of decommissioning.

(2) The authorised scheme must not commence unless no later than six months prior to the commencement a written scheme of investigation has been submitted to and approved by the MMO, following consultation with the statutory

historic body, in accordance with the outline marine written scheme of investigation, and in accordance with industry good practice, following consultation with the statutory historic body to include—

- (a) details of responsibilities of the undertaker, archaeological consultant and contractor;
- (b) a methodology for further site investigation and surveys including any targets locations and specifications for geophysical geotechnical and diver or remotely operated vehicle investigations, removal of archaeological finds if required, and including for unexploded ordnance;
- (c) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within six months of any survey being completed;
- (d) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones and/or micro-siting prior to construction;
- (e) monitoring of archaeological exclusion zones during and post construction;
- (f) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the Archaeological Data Service, by submitting an OASIS ('Online Access to the Index of archaeological investigations') form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO and the statutory historic body that the OASIS form has been submitted to the Archaeological Data Service within two weeks of submission;
- (g) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and
- (h) a timetable for further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the relevant parts of the offshore Order limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.

(3) Pre-commencement archaeological investigations and pre-commencement material operations which involve intrusive activities must only take place in accordance with a specific written scheme of investigation (which must accord with the details set out in the outline marine written scheme of investigation) which has been submitted to and approved by the MMO.

12.—(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 11 (save for that required under condition 11(1)(j)) must be secure that details must be submitted for approval at least four months prior to the intended commencement of the authorised scheme or relevant part thereof, except where otherwise stated or otherwise agreed in writing by the MMO.

(2) The monitoring plan required under condition 11(1)(j) must be submitted in accordance with the following, unless otherwise agreed in writing with the MMO—

- (a) at least six months prior to the first survey, detail of any pre-construction surveys and an outline of all proposed monitoring;
- (b) at least six months prior to construction, detail on construction monitoring; and
- (c) at least six months prior to commissioning, detail of post-construction (and operational) monitoring.

(3) The MMO must determine an application for approval made under condition 11 within a period of four months commencing on the date the application is received by the MMO, except where an application is required to be made no less than six months prior to the intended commencement of the authorised scheme or relevant activity in which case the MMO must determine the application for approval within the period of six months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(4) No part of the authorised scheme may commence until for that relevant part of the authorised scheme the MMO has approved in writing any relevant programme, statement, plan, protocol or scheme required to be approved under condition 11.

(5) The authorised scheme must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 11, unless otherwise agreed in writing by the MMO.

Safety Zones

13. The authorised scheme or relevant part thereof must not commence until (insofar as relevant to the part of the authorised scheme) an application has been made to the Secretary of State for a safety zone for the relevant activities pursuant to the Energy Act 2004.

Offshore safety management

14. No part of the authorised scheme may commence until the MMO, following consultation with the MCA, has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations as appropriate to the authorised scheme contained within MGN654 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes.

Reporting of engaged agents, contractors and vessels

15.—(1) The undertaker must provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the authorised scheme no less than 24 hours before the agent, contractor or subcontractor carries out any part of the authorised scheme; and
- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the authorised scheme.

(2) Any changes to the name and function of the specified agent, contractor or subcontractor that will carry out the specified licenced activities or vessel to be used must be notified to the MMO in writing prior to the agent, contractor, subcontractor or vessel carrying out the relevant part of the authorised scheme.

(3) The undertaker must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to any agents, contractors or subcontractors that will carry out the part of the authorised scheme on behalf of the undertaker prior to them carrying out any licensed activity.

Pre-construction monitoring and surveys

16.—(1) The undertaker must, in discharging condition 11(1)(j) in respect of surveys and monitoring, provide details of proposed surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report and—

- (a) the survey proposals must be in accordance with the principles set out in the offshore in-principle monitoring plan and must specify each survey’s objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, the pre-construction survey proposals must have due regard to the need to undertake—

- (a) a full sea floor coverage swath–bathymetry survey undertaken to IHO Order 1a standard that meets the requirements of MGN654 and its annexes, and side scan sonar of those parts of the offshore Order limits in which it is proposed to carry out the authorised scheme including proposed cable locations and an appropriate buffer. This should fulfil the requirements of MGN654 and its supporting ‘Hydrographic Guidelines for Offshore Renewable Energy Developers’, which includes the requirement for the full density data and reports to be delivered to the MCA and the UKHO for the update of nautical charts and publications;
- (b) a survey to determine the location, extent and composition of chalk habitats, stony reef and potential Sabellaria spinulosa reef features, potential nesting sites for black seabream, and peat and clay exposures as set out within the outline in-principle monitoring plan;
- (c) inform future navigation risk assessments as part of the cable specification and installation plan; and

- (d) inform the identification of any archaeological exclusion zone and post consent monitoring of any such archaeological exclusion zone.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the baseline report to the MMO in the agreed format and in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO and submitted to the MCA and submitted to the MCA in a form approved pursuant to MGN 654.

Construction monitoring

17. The undertaker must in discharging condition 11(1)(j) for the monitoring plan for the construction phase provide details of any proposed construction monitoring, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in accordance with the principles set out in the offshore in-principle monitoring plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

Post-construction monitoring

18.—(1) The undertaker must, in discharging condition 11(1)(j), submit a monitoring plan for the post-construction monitoring providing details of proposed post-construction surveys, including methodologies (including appropriate buffers, where relevant) and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in accordance with the in-principle monitoring plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement and is to include a survey to determine the location, extent and composition of and Sabellaria spinulosa reef and potential nesting sites for black seabream.

(2) The surveys to be undertaken pursuant to sub-paragraph (1) above must include a swath bathymetric survey to IHO Order 1a of those parts of the offshore Order limits where the authorised scheme has been constructed and provide the data and survey report(s) to the MCA and UKHO. This should fulfil the requirements of MGN654 and its supporting 'Hydrographic Guidelines for Offshore Renewable Energy Developers', which includes the requirement for the full density data and reports to be delivered to the MCA and the UKHO for the update of nautical charts and publications.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO.

(4) Within 12 weeks of completion of any array cable repair or replacement works, the undertaker must undertake a post installation survey along the section of array cable that has undergone repair or replacement undertaken to IHO Order 1a standard, to demonstrate the successful burial of the array cable and submit a report to the MMO, the MCA and Trinity House on its findings.

(5) In the event that the reports provided to the MMO under sub-paragraph (3) identify impacts which are unanticipated and/or beyond those predicted within the Environmental Statement and the Habitats Regulations Assessment an adaptive management plan to reduce effects to within what was predicted within the Environmental Statement and the Habitats Regulations Assessment, unless otherwise agreed by the MMO in writing, must be submitted alongside the monitoring reports submitted under sub-paragraph (3). This plan must be agreed by the MMO in consultation with the relevant statutory nature conservation bodies to reduce effects to an agreed suitable level for this project. Any such agreed and approved adaptive management or mitigation should be implemented and monitored in full to a timetable first agreed in writing with the MMO. In the event that this adaptive management or mitigation requires a separate consent, the undertaker shall apply for such consent. Where a separate consent is required to undertake the agreed adaptive management or mitigation, the undertaker shall only be required to undertake the adaptive management or mitigation once the consent is granted.

Timing of monitoring report

19. Any monitoring report compiled in accordance with the monitoring plans provided under condition 11 must be provided to the MMO no later than four months following completion of the monitoring to which it relates, unless otherwise agreed in writing with the MMO.

Updating of cable monitoring plan

20. Following installation of array cables, the cable monitoring plan required under condition 11(1)(n)(v) must be updated with the results of the post-installation surveys. The plan must be implemented during the operational lifetime of the project and reviewed as specified within the plan, following cable burial surveys, or as instructed in writing by the MMO.

Piling

21.—(1) In the event that driven or part-driven pile foundations are proposed to be used any such piling must be undertaken in accordance with—

- (a) the piling marine mammals mitigation protocol approved under condition 11(1)(l)(i); and
- (b) the sensitive features mitigation plan approved under condition 11(1)(k).

Reporting of cable protection

22.—(1) Not more than four months following completion of the construction phase of the authorised scheme, the undertaker must provide the MMO and the statutory nature conservation body with a report setting out details of the cable protection used for the authorised scheme.

(2) The report is to include the following information—

- (a) location of the cable protection;
- (b) volume of cable protection; and
- (c) any other information relating to the cable protection as agreed between the MMO and the undertaker.

Decommissioning

23.—(1) Prior to any decommissioning activities being undertaken the undertaker must submit and secure the written approval of the MMO for a decommissioning mammal protection protocol (Decommissioning MPP).

(2) The Decommissioning MPP must be implemented as approved.

Completion of construction

24.—(1) The undertaker must submit a close out report to the MMO, MCA, UK Hydrographic Office and the statutory nature conservation body within three months of the date of completion of construction. The close out report must confirm the date of completion of construction and must include the following details—

- (a) the final number of installed wind turbine generators;
 - (b) a plan of the layout of installed wind turbine generators;
 - (c) latitude and longitude coordinates of the centre point of the location of each wind turbine generator provided as Geographical Information System data referenced to WGS84 datum;
 - (d) latitude and longitude coordinates of the inter array cable routes provided as Geographical Information System data referenced to WGS84 datum; and
 - (e) the installed wind turbine generator parameters relevant for seascape, landscape and visual impact.
- (2) Following completion of construction, no further construction activities can be undertaken under this licence.

Reporting of impact pile driving

25.—(1) Only when driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry—

- (a) prior to the commencement of each part of construction of the authorised scheme, information on the expected location and expected start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements; and

- (b) within 12 weeks of completion of impact pile driving for the relevant part of the authorised scheme, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry’s Close Out requirements.

(2) The undertaker must notify the MMO in writing of the successful submission of Forward Look or Close Out data pursuant to paragraph (1) above within seven days of the submission.

(3) For the purpose of this condition, “Forward Look” and “Close Out” mean the requirements as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) as amended, updated or superseded from time to time.

Piling restriction

26.—There shall be no piling associated with the authorised development between the dates of 1 March to 31 July inclusive, unless otherwise agreed to by the MMO and the statutory nature conservation body.

SCHEDULE 12

Article 41

DEEMED MARINE LICENCE UNDER THE 2009 ACT— TRANSMISSION ASSETS

PART 1

LICENSED MARINE ACTIVITIES

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004(a);

“the 2008 Act” means the Planning Act 2008(b);

“the 2009 Act” means the Marine and Coastal Access Act 2009(c);

“array area” means that part of the offshore Order limits in which Work Nos. 1, 2 and 3 may be undertaken as shown on the offshore works plans;

“array periphery” means the outermost edge of the infrastructure to be constructed as Work No. 1 as described in Part 1 of Schedule 1 (authorised development) of the Order and identified in the design plan to be approved pursuant to the deemed marine licence (generation assets);

“authorised deposits” means the substances and articles specified in paragraph 4 of Part 1 of this licence;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 of the Order and any other development authorised by this Order that is development within the meaning of section 32 of the 2008 Act;

“authorised scheme” means Work Nos. 3 to 6 described in paragraph 3 of Part 1 of this licence or any part of those works;

“buoy” means any floating device used for navigational purposes or measurement purposes including LiDAR buoys, wave buoys and guard buoys;

“cable protection” means physical measures for the protection of export cables from physical damage and exposure including but not limited to concrete mattresses and/or rock placement, bagged solutions filled with stone, rock or gravel, grout, concrete and other materials and protective shells or sheaths;

“commence” means the first carrying out of any licensed marine activities authorised by this marine licence, save for operations consisting of offshore preparation works or pre-construction surveys and monitoring approved under this licence and “commenced” and “commencement” must be construed accordingly;

(a) 2004 c. 20.

(b) 2008 c. 29.

(c) 2009 c. 23.

“condition” means a condition in Part 2 of this licence;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions;

“draft piling marine mammal mitigation protocol” means the document certified as the draft piling marine mammal mitigation protocol by the Secretary of State under article 51 of the Order;

“draft UXO marine mammal mitigation protocol” means the document certified as the draft UXO marine mammal mitigation protocol by the Secretary of State under article 51 of the Order;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of Part 4 (marine licensing) of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order article 51 (certification of plans and documents etc);

“export cable” means the cable circuits connecting the offshore substation(s) comprising Work No. 3(a) to those parts of the authorised scheme to be undertaken landward of mean high water springs comprising Work Nos. 4, 5 and 6;

“export cable corridor” means that part of the offshore Order limits seawards of MLWS excluding the array area;

“flow energy dissipation devices” means solutions that dissipate flow energy and entrap sediment, and including options such as frond mats, mats of large, linked hoops, and structures covered with long spikes

“in principle sensitive features mitigation plan” means the document certified as the in-principle sensitive features mitigation plan by the Secretary of State for the purposes of the Order under article 51;

“intrusive activities” means activities including anchoring of vessels, jacking up of vessels, depositing soil and seabed clearance;

“interconnector cable” means the cable circuits comprising Work No. 3(b) connecting the offshore substations comprising Work No.3(a);

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“licence 1 (generation)” means the licence set out in Schedule 11 (deemed licence under the 2009 Act – generation assets) of the Order;

“licensed activities” means the activities specified in Part 1 of this licence;

“LiDAR” means the remote sensing method which uses light detection and ranging;

“maintain” includes inspect and survey, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace, to the extent assessed in the environmental statement; and derivatives of “maintain” must be construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“monopile foundation” means a steel pile, typically cylindrical, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“multileg foundation” means a lattice type structure constructed of steel, which may include scour protection and additional equipment such as, J-tubes, corrosion protection systems and access platforms;

“offshore in-principle monitoring plan” means the document certified as the offshore in-principle monitoring plan by the Secretary of State for the purposes of the Order under article 51;

“the offshore Order limits” means the offshore Order limits defined by the offshore Order limits and grid coordinates plan and set out in table 1 in Part 1 of Schedule 1 to the Order;

“the offshore Order limits and grid coordinates plan” means the plan certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of the Order under article 51;

“offshore substation” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks containing—

- (a) electrical equipment required to switch, transform, convert electricity generated at the wind turbine generators to a higher voltage and provide reactive power compensation; and
- (b) housing accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or wind turbine generators;

“offshore works plan” means the plan certified as the offshore works plan by the Secretary of State pursuant to article 51 of the Order;

“Order” means the Rampion 2 Offshore Wind Farm Order 20xx;

“outline cable burial risk assessment” means the document certified as the outline cable burial risk assessment by the Secretary of State for the purposes of this Order under article 51;

“outline cable specification and installation plan” means the document certified as the outline cable specification and installation plan by the Secretary of State for the purposes of this Order under article 51;

“outline diver communications plan” means the document certified as the outline diver communications plan by the Secretary of State for the purposes of this Order under article 51;

“outline fisheries liaison and co-existence plan” means the document certified as the outline fisheries liaison and co-existence plan by the Secretary of State for the purposes of the Order under article 51;

“outline marine written scheme of investigation” means the document certified as the outline offshore written scheme of investigation by the Secretary of State for the purposes of the Order under article 51;

“outline project environmental management plan” means the document certified as the outline project environmental management plan by the Secretary of State for the purposes of the Order under article 51;

“outline scour protection and cable protection plan” means the plan or plans certified as the outline scour protection and cable protection plan by the Secretary of State for the purposes of the Order under article 51;

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed to secure multileg foundations;

“scour protection” means measures to prevent loss of seabed sediment around any structure placed in or on the seabed using methods including rock or gravel placement, concrete mattresses, flow energy dissipation devices or bagged solutions;

“statutory historic body” means the Historic Buildings and Monuments Commission for England or its successor in function;

“statutory nature conservation body” means the appropriate nature conservation body as defined in regulation 5 of the Conservation of Habitats and Species Regulations 2017;

“suction bucket” means a steel cylindrical structure attached to the legs of a multileg foundation which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“UXO” means unexploded ordnance;

“undertaker” means Rampion Extension Development Limited or such other person to whom the benefit of this licence is transferred pursuant to the terms of article 5 (benefit of the Order) of the Rampion 2 Offshore Windfarm Order 20xx;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“wind farm separation zones” means those parts of the array area within which Work No. 1. as permitted pursuant to licence 1 (generation) and Work No. 3(a) may not be constructed as shown on the offshore works plan;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle, transition pieces and ancillary electrical and other equipment which may include J-tube(s), access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation or transition piece comprising Work No 1 as described in licence 1 (generation); and

“Working in Proximity to Wildlife in the Marine Environment Protocol” means the document certified as the Working in Proximity to Wildlife in the Marine Environment Protocol by the Secretary of State for the purposes of this Order under article 51.

(3) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(4) Unless otherwise indicated—

(a) all times are taken to be Greenwich Mean Time (GMT); and

(b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(5) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

(a) Marine Management Organisation

Marine Licensing Team

Lancaster House

Hampshire Court

Newcastle Business Park

Newcastle upon Tyne

NE4 7YH

Tel: 0300 123 1032;

(b) Marine Management Organisation (local office)

Shoreham office

Pilots' Watch House

Basin Road South

Portslade

West Sussex

BN41 1WD;

(c) Trinity House

Tower Hill

London EC3N 4DH

Tel: 020 7481 6900;

(d) The United Kingdom Hydrographic Office

Admiralty Way

Taunton

Somerset

TA1 2DN

Tel: 01823 337 900;

(e) Maritime and Coastguard Agency

UK Technical Services Navigation

Spring Place

105 Commercial Road

Southampton

SO15 1EG

Tel: 020 3817 2554;

- (f) Centre for Environment, Fisheries and Aquaculture Science

Pakefield Road

Lowestoft

Suffolk

NR33 0HT

Tel: 01502 562 244;

- (g) Natural England 4th Floor

Foss House

1-2 Peasholme Green

York

YO1 7PX

Tel: 0300 060 4911;

- (h) Historic England

4th Floor, Cannon Bridge House

25 Downgate Hill

London

EC4R 2YA.

Details of licensed marine activities

2. Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act—

- (a) the deposit at sea within the offshore Order limits of the substances and articles specified in paragraph 4 below;
- (b) the disposal at sea of up to 2,568,500 cubic metres of inert material of natural origin and/or dredged material produced during construction drilling or seabed preparation for foundation works and sandwave and other seabed preparation and cable circuit installation works comprising Work Nos. 3 and 4 and the maintenance of such works within that part of the offshore Order limits comprising the array area provided that such quantity of material permitted to be disposed of in the array area must take account of and include material disposed of in the array area during the carrying out and maintenance of Work Nos. 1 and 2 as permitted pursuant to licence 1 (generation);
- (c) the disposal at sea of up to 340,720 cubic metres of inert material of natural origin and/or dredged material within the offshore Order limits produced during construction drilling or seabed preparation for cable circuit installation works comprising Work Nos. 4 and 5 or by construction of exit pits in connection with horizontal directional drilling comprising Work No. 5 in the export cable corridor provided that such material may subsequently be used to the extent required for reinstatement of the exit pits comprising Work No. 5;
- (d) the construction of works in or over the sea and/or on or under the sea bed;
- (e) dredging for the purposes of seabed preparation for foundation works and/or electrical circuit works and/or cable circuit installation works;
- (f) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; and
- (g) site clearance and preparation works including debris removal, levelling, boulder clearance works either by displacement ploughing or subsea grab technique or any other equivalent method and removal of static fishing equipment.

3.—(1) Such activities are authorised in relation to the construction, maintenance and operation of the following in the locations shown on the offshore works plans—

- (a) Work No. 3—
 - (i) up to three offshore substations each fixed to the seabed by monopile foundation, or multileg foundation and including connection to the cable circuits comprising Work No. 2(b) approved pursuant to licence 1 (generation), cable circuits comprising Work No. 3(b) and cable circuits comprising Work No. 4; and
 - (ii) up to two offshore interconnector cables in total each connecting one offshore substation to another.
- (b) Work No. 4 – up to four cable circuits in total between and connecting one or more of the offshore substations comprising Work No. 3(a) and the cable circuits comprising Work No. 5 laid on or beneath the seabed.
- (c) Work No. 5—
 - (i) up to four temporary horizontal directional drilling exit pits located seaward of MLWS; and
 - (ii) up to four cable circuits and associated ducts between and connecting the cable circuits comprising Work No. 4 and the cable circuits comprising Work No. 6 laid on or beneath the seabed or in ducts laid on or beneath the seabed.
- (d) Work No. 6 – landfall connection works comprising up to four cable circuits and associated ducts laid underground by horizontal directional drilling within the Order limits seaward of MHWS and landward of MLWS connecting Work No. 5 and those parts of the authorised development to be undertaken landward of mean high water springs.

(2) In connection with such Work Nos. 3 to 6 and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised scheme and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection;
- (c) dredging;
- (d) the removal of material from the seabed and the disposal of inert material of natural origin within the Order limits produced during construction drilling, seabed preparation for foundation works, and cable installation preparation such as sandwave clearance, boulder clearance, and pre-trenching;
- (e) removal of static fishing equipment; and
- (f) such other works as may be necessary or expedient for the purpose of or in connection with the construction or use of the authorised scheme and which are within the scope of the environmental impact assessment recorded in the environmental statement.

(3) In connection with such Work Nos. 3, 4, 5 and 6 ancillary works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme; and
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works.

4. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic material;
- (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation works for foundation works and seabed preparation works and export cable installation and from the construction of exit pits in connection with horizontal directional drilling comprising Work No.5 and Work No.6; and

(g) marine coatings, other chemicals and timber.

5.—(1) The grid coordinates for that part of the offshore Order limits where those parts of the authorised project comprising Work No. 3 (a) may be carried out as shown on the offshore works plans are specified below—

Table 1

<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>
1	50° 39' 1.7938"	-000° 36' 8.7262"	71	50° 39' 27.3702"	-000° 30' 22.4457"
2	50° 39' 24.3939"	-000° 33' 40.8674"	72	50° 39' 27.5636"	-000° 30' 20.9233"
3	50° 39' 38.5128"	-000° 32' 8.3008"	73	50° 39' 27.7675"	-000° 30' 19.3961"
4	50° 39' 38.0150"	-000° 32' 7.9507"	74	50° 39' 27.9818"	-000° 30' 17.8647"
5	50° 39' 37.5445"	-000° 32' 7.5894"	75	50° 39' 28.2064"	-000° 30' 16.3295"
6	50° 39' 37.0814"	-000° 32' 7.2019"	76	50° 39' 28.4413"	-000° 30' 14.7911"
7	50° 39' 36.6259"	-000° 32' 6.7883"	77	50° 39' 28.6863"	-000° 30' 13.2497"
8	50° 39' 36.1781"	-000° 32' 6.3487"	78	50° 39' 28.9415"	-000° 30' 11.7061"
9	50° 39' 35.7382"	-000° 32' 5.8833"	79	50° 39' 29.2067"	-000° 30' 10.1605"
10	50° 39' 35.3062"	-000° 32' 5.3922"	80	50° 39' 29.4819"	-000° 30' 8.6135"
11	50° 39' 34.8823"	-000° 32' 4.8755"	81	50° 39' 29.7669"	-000° 30' 7.0655"
12	50° 39' 34.4667"	-000° 32' 4.3334"	82	50° 39' 30.0618"	-000° 30' 5.5171"
13	50° 39' 34.0594"	-000° 32' 3.7661"	83	50° 39' 30.3663"	-000° 30' 3.9686"
14	50° 39' 33.6606"	-000° 32' 3.1737"	84	50° 39' 30.6804"	-000° 30' 2.4206"
15	50° 39' 33.2705"	-000° 32' 2.5565"	85	50° 39' 31.0041"	-000° 30' 0.8735"
16	50° 39' 32.8890"	-000° 32' 1.9146"	86	50° 39' 31.3371"	-000° 29' 59.3278"
17	50° 39' 32.5164"	-000° 32' 1.2482"	87	50° 39' 31.6795"	-000° 29' 57.7840"
18	50° 39' 32.1528"	-000° 32' 0.5575"	88	50° 39' 32.0310"	-000° 29' 56.2425"
19	50° 39' 31.7982"	-000° 31' 59.8427"	89	50° 39' 32.3917"	-000° 29' 54.7039"
20	50° 39' 31.4528"	-000° 31' 59.1040"	90	50° 39' 32.7613"	-000° 29' 53.1685"
21	50° 39' 31.1167"	-000° 31' 58.3418"	91	50° 39' 33.1398"	-000° 29' 51.6369"
22	50° 39' 30.7900"	-000° 31' 57.5561"	92	50° 39' 33.5271"	-000° 29' 50.1095"
23	50° 39' 30.4727"	-000° 31' 56.7473"	93	50° 39' 33.9230"	-000° 29' 48.5867"

24	50° 39' 30.1651"	-000° 31' 55.9155"	94	50° 39' 34.3275"	-000° 29' 47.0691"
25	50° 39' 29.8671"	-000° 31' 55.0611"	95	50° 39' 34.7403"	-000° 29' 45.5571"
26	50° 39' 29.5788"	-000° 31' 54.1843"	96	50° 39' 35.1614"	-000° 29' 44.0512"
27	50° 39' 29.3005"	-000° 31' 53.2853"	97	50° 39' 35.5907"	-000° 29' 42.5518"
28	50° 39' 29.0320"	-000° 31' 52.3645"	98	50° 39' 36.0279"	-000° 29' 41.0593"
29	50° 39' 28.7736"	-000° 31' 51.4221"	99	50° 39' 36.4731"	-000° 29' 39.5743"
30	50° 39' 28.5253"	-000° 31' 50.4584"	100	50° 39' 36.9260"	-000° 29' 38.0972"
31	50° 39' 28.2871"	-000° 31' 49.4737"	101	50° 39' 37.3865"	-000° 29' 36.6284"
32	50° 39' 28.0592"	-000° 31' 48.4683"	102	50° 39' 37.8544"	-000° 29' 35.1684"
33	50° 39' 27.8416"	-000° 31' 47.4425"	103	50° 39' 38.3297"	-000° 29' 33.7176"
34	50° 39' 27.6344"	-000° 31' 46.3966"	104	50° 40' 22.3750"	-000° 27' 19.7685"
35	50° 39' 27.4376"	-000° 31' 45.3309"	105	50° 40' 53.6018"	-000° 23' 53.4563"
36	50° 39' 27.2513"	-000° 31' 44.2459"	106	50° 37' 23.6536"	-000° 27' 24.4299"
37	50° 39' 27.0756"	-000° 31' 43.1417"	107	50° 36' 37.8171"	-000° 27' 24.4229"
38	50° 39' 26.9105"	-000° 31' 42.0187"	108	50° 36' 16.5551"	-000° 29' 46.1531"
39	50° 39' 26.7561"	-000° 31' 40.8773"	109	50° 36' 12.3786"	-000° 30' 12.7043"
40	50° 39' 26.6123"	-000° 31' 39.7178"	110	50° 35' 33.2206"	-000° 34' 21.0588"
41	50° 39' 26.4793"	-000° 31' 38.5406"	111	50° 35' 29.7384"	-000° 34' 43.2949"
42	50° 39' 26.3572"	-000° 31' 37.3460"	112	50° 35' 11.5476"	-000° 36' 40.5405"
43	50° 39' 26.2458"	-000° 31' 36.1344"	113	50° 35' 8.6938"	-000° 36' 58.9128"
44	50° 39' 26.1453"	-000° 31' 34.9062"	114	50° 35' 8.5860"	-000° 37' 35.2466"
45	50° 39' 26.0557"	-000° 31' 33.6617"	115	50° 35' 15.1952"	-000° 37' 36.0920"
46	50° 39' 25.9770"	-000° 31' 32.4013"	116	50° 35' 17.9985"	-000° 37' 36.4578"
47	50° 39' 25.9093"	-000° 31' 31.1254"	117	50° 35' 18.0869"	-000° 37' 36.4693"
48	50° 39' 25.8526"	-000° 31' 29.8344"	118	50° 35' 25.0537"	-000° 37' 37.3783"
49	50° 39' 25.8068"	-000° 31' 28.5286"	119	50° 35' 31.1113"	-000° 37' 38.1688"

50	50° 39' 25.7720"	-000° 31' 27.2086"	120	50° 35' 52.0407"	-000° 37' 40.9002"
51	50° 39' 25.7482"	-000° 31' 25.8746"	121	50° 36' 22.3039"	-000° 37' 44.8508"
52	50° 39' 25.7355"	-000° 31' 24.5271"	122	50° 36' 24.7136"	-000° 37' 45.1655"
53	50° 39' 25.7337"	-000° 31' 23.1665"	123	50° 36' 36.3272"	-000° 37' 46.6819"
54	50° 39' 25.7265"	-000° 30' 47.1665"	124	50° 37' 8.9157"	-000° 37' 51.3889"
55	50° 39' 25.7358"	-000° 30' 45.7932"	125	50° 37' 14.4423"	-000° 37' 52.1326"
56	50° 39' 25.7561"	-000° 30' 44.4076"	126	50° 37' 26.2596"	-000° 37' 53.7231"
57	50° 39' 25.7874"	-000° 30' 43.0102"	127	50° 37' 33.2783"	-000° 37' 54.6678"
58	50° 39' 25.8297"	-000° 30' 41.6014"	128	50° 37' 47.0466"	-000° 37' 56.5213"
59	50° 39' 25.8830"	-000° 30' 40.1815"	129	50° 37' 52.4650"	-000° 37' 57.2507"
60	50° 39' 25.9472"	-000° 30' 38.7511"	130	50° 37' 55.7250"	-000° 37' 57.5509"
61	50° 39' 26.0225"	-000° 30' 37.3106"	131	50° 39' 1.7938"	-000° 36' 8.7262"
62	50° 39' 26.1086"	-000° 30' 35.8603"	132	50° 35' 26.4347"	-000° 14' 9.0079"
63	50° 39' 26.2056"	-000° 30' 34.4008"	133	50° 35' 43.9510"	-000° 20' 7.3806"
64	50° 39' 26.3136"	-000° 30' 32.9325"	134	50° 36' 55.0393"	-000° 20' 30.4937"
65	50° 39' 26.4323"	-000° 30' 31.4559"	135	50° 38' 29.1370"	-000° 10' 42.0738"
66	50° 39' 26.5619"	-000° 30' 29.9713"	136	50° 36' 40.5733"	-000° 10' 7.2790"
67	50° 39' 26.7022"	-000° 30' 28.4793"	137	50° 35' 56.8348"	-000° 12' 29.9698"
68	50° 39' 26.8532"	-000° 30' 26.9803"	138	50° 35' 46.1905"	-000° 13' 4.6597"
69	50° 39' 27.0149"	-000° 30' 25.4747"	139	50° 35' 26.4347"	-000° 14' 9.0079"
70	50° 39' 27.1873"	-000° 30' 23.9630"			

(2) that part of the offshore Order limits where those parts of the authorised project comprising Work No. 3(b) may be carried out as shown on the offshore works plan are specified below—

Table 2

<i>Point</i>	<i>Longitude</i>	<i>Latitude</i>	<i>Point</i>	<i>Longitude</i>	<i>Latitude</i>
1	50° 39' 52.3821"	-000° 30' 37.2248"	48	50° 39' 22.9375"	-000° 11' 0.1216"
2	50° 41' 11.3500"	-000° 21' 55.8599"	49	50° 39' 22.9921"	-000° 10' 59.8545"
3	50° 39' 53.9451"	-000° 21' 30.9561"	50	50° 39' 23.0026"	-000° 10' 59.8032"

4	50° 38' 43.2945"	-000° 21' 8.2445"	51	50° 39' 23.0301"	-000° 10' 59.6688"
5	50° 38' 11.9503"	-000° 20' 58.1743"	52	50° 39' 23.0417"	-000° 10' 59.6121"
6	50° 37' 42.3197"	-000° 20' 48.6579"	53	50° 39' 23.0889"	-000° 10' 59.3814"
7	50° 37' 32.8206"	-000° 20' 45.6028"	54	50° 36' 40.5733"	-000° 10' 7.2790"
8	50° 37' 32.7858"	-000° 20' 45.5916"	55	50° 35' 56.8348"	-000° 12' 29.9698"
9	50° 37' 32.7633"	-000° 20' 45.5843"	56	50° 35' 46.1905"	-000° 13' 4.6597"
10	50° 37' 22.7987"	-000° 20' 42.3409"	57	50° 35' 26.4347"	-000° 14' 9.0079"
11	50° 38' 31.7775"	-000° 16' 26.970"	58	50° 35' 44.1096"	-000° 20' 10.6548"
12	50° 38' 13.3226"	-000° 16' 17.0707"	59	50° 36' 25.6547"	-000° 21' 2.8378"
13	50° 38' 41.3993"	-000° 14' 22.9538"	60	50° 36' 27.9442"	-000° 21' 5.7145"
14	50° 39' 19.2087"	-000° 11' 18.3535"	61	50° 36' 33.7315"	-000° 21' 12.9866"
15	50° 39' 19.3373"	-000° 11' 17.7245"	62	50° 36' 36.0255"	-000° 21' 15.9940"
16	50° 39' 19.5025"	-000° 11' 16.9170"	63	50° 36' 42.3252"	-000° 21' 24.2532"
17	50° 39' 19.6186"	-000° 11' 16.3492"	64	50° 36' 50.0795"	-000° 21' 34.4205"
18	50° 39' 19.6908"	-000° 11' 15.9965"	65	50° 37' 0.5900"	-000° 21' 48.2036"
19	50° 39' 19.7648"	-000° 11' 15.6344"	66	50° 37' 2.6269"	-000° 21' 50.8749"
20	50° 39' 20.4130"	-000° 11' 12.4655"	67	50° 37' 26.1929"	-000° 22' 21.7880"
21	50° 39' 20.4164"	-000° 11' 12.4490"	68	50° 37' 27.1480"	-000° 22' 23.0411"
22	50° 39' 20.6912"	-000° 11' 11.1054"	69	50° 36' 38.8171"	-000° 27' 24.4229"
23	50° 39' 20.6985"	-000° 11' 11.0695"	70	50° 36' 16.5551"	-000° 29' 46.1531"
24	50° 39' 20.7558"	-000° 11' 10.7896"	71	50° 36' 12.3786"	-000° 30' 12.7043"
25	50° 39' 20.7809"	-000° 11' 10.6668"	72	50° 35' 33.2206"	-000° 34' 21.0588"
26	50° 39' 20.8160"	-000° 11' 10.4952"	73	50° 35' 29.7384"	-000° 34' 43.2949"
27	50° 39' 20.8413"	-000° 11' 10.3711"	74	50° 35' 11.5476"	-000° 36' 40.5405"
28	50° 39' 20.8647"	-000° 11' 10.2572"	75	50° 35' 8.6938"	-000° 36' 58.9128"
29	50° 39' 20.8985"	-000° 11' 10.0916"	76	50° 35' 8.5860"	-000° 37' 35.2466"

30	50° 39' 20.9320"	-000° 11' 9.9280"	77	50° 35' 15.1952"	-000° 37' 36.0920"
31	50° 39' 20.9471"	-000° 11' 9.8539"	78	50° 35' 17.9985"	-000° 37' 36.4578"
32	50° 39' 20.9846"	-000° 11' 9.6706"	79	50° 35' 18.0869"	-000° 37' 36.4693"
33	50° 39' 21.0187"	-000° 11' 9.5038"	80	50° 35' 25.0537"	-000° 37' 37.3783"
34	50° 39' 21.0425"	-000° 11' 9.3875"	81	50° 35' 31.1113"	-000° 37' 38.1688"
35	50° 39' 21.0907"	-000° 11' 9.1519"	82	50° 35' 52.0407"	-000° 37' 40.9002"
36	50° 39' 21.1078"	-000° 11' 9.0682"	83	50° 36' 22.3039"	-000° 37' 44.8508"
37	50° 39' 21.1552"	-000° 11' 8.8368"	84	50° 36' 24.7136"	-000° 37' 45.1655"
38	50° 39' 21.1689"	-000° 11' 8.7697"	85	50° 36' 36.3272"	-000° 37' 46.6819"
39	50° 39' 21.1691"	-000° 11' 8.7686"	86	50° 37' 8.9157"	-000° 37' 51.3889"
40	50° 39' 21.2393"	-000° 11' 8.4254"	87	50° 37' 14.4423"	-000° 37' 52.1326"
41	50° 39' 21.2579"	-000° 11' 8.3344"	88	50° 37' 26.2596"	-000° 37' 53.7231"
42	50° 39' 21.2943"	-000° 11' 8.1562"	89	50° 37' 33.2783"	-000° 37' 54.6678"
43	50° 39' 21.3304"	-000° 11' 7.9801"	90	50° 37' 47.0466"	-000° 37' 56.5213"
44	50° 39' 21.3412"	-000° 11' 7.9272"	91	50° 37' 52.4650"	-000° 37' 57.2507"
45	50° 39' 22.1787"	-000° 11' 3.8321"	92	50° 37' 55.7250"	-000° 37' 57.5509"
46	50° 39' 22.8501"	-000° 11' 0.5488"	93	50° 39' 1.7938"	-000° 36' 8.7262"
47	50° 39' 22.8994"	-000° 11' 0.3078"	94	50° 39' 24.3939"	-000° 33' 40.8674"

(3) that part of the offshore Order limits where those parts of the authorised project comprising Work No. 4 may be carried out as shown on the offshore works plan are specified below—

Table 3

<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>
1	50° 46' 49.8007"	-000° 32' 42.0835"	97	50° 37' 8.9157"	-000° 37' 51.3889"
2	50° 46' 40.6972"	-000° 32' 42.1966"	98	50° 37' 14.4423"	-000° 37' 52.1326"
3	50° 45' 42.5924"	-000° 32' 42.9178"	99	50° 37' 26.2596"	-000° 37' 53.7231"
4	50° 44' 50.3060"	-000° 32' 43.5658"	100	50° 37' 33.2783"	-000° 37' 54.6678"
5	50° 43' 27.9008"	-000° 32' 44.5850"	101	50° 37' 47.0466"	-000° 37' 56.5213"

6	50° 43' 4.3293"	-000° 32' 44.8761"	102	50° 37' 52.4650"	-000° 37' 57.2507"
7	50° 42' 28.3486"	-000° 32' 45.3201"	103	50° 37' 55.7250"	-000° 37' 57.5509"
8	50° 42' 25.1670"	-000° 32' 45.4370"	104	50° 39' 1.7938"	-000° 36' 8.7262"
9	50° 42' 22.6856"	-000° 32' 42.9705"	105	50° 39' 24.3939"	-000° 33' 40.8674"
10	50° 41' 28.6123"	-000° 31' 57.7034"	106	50° 40' 16.3645"	-000° 34' 24.3839"
11	50° 41' 12.8834"	-000° 31' 44.5421"	107	50° 41' 39.4711"	-000° 35' 34.0336"
12	50° 39' 52.3821"	-000° 30' 37.2248"	108	50° 42' 42.0736"	-000° 36' 26.5498"
13	50° 41' 11.3500"	-000° 21' 55.8599"	109	50° 42' 54.3446"	-000° 36' 23.8715"
14	50° 39' 53.9451"	-000° 21' 30.9561"	110	50° 43' 29.5066"	-000° 36' 16.1947"
15	50° 38' 43.2945"	-000° 21' 8.2445"	111	50° 44' 36.7196"	-000° 36' 1.5105"
16	50° 38' 11.9503"	-000° 20' 58.1743"	112	50° 45' 10.4373"	-000° 35' 54.1393"
17	50° 37' 42.3197"	-000° 20' 48.6580"	113	50° 46' 18.6039"	-000° 35' 39.2272"
18	50° 37' 32.8206"	-000° 20' 45.6028"	114	50° 46' 31.3325"	-000° 35' 36.4412"
19	50° 37' 32.7858"	-000° 20' 45.5916"	115	50° 46' 30.8906"	-000° 35' 31.1402"
20	50° 37' 32.7633"	-000° 20' 45.5843"	116	50° 46' 30.6142"	-000° 35' 24.4745"
21	50° 37' 22.7988"	-000° 20' 42.3409"	117	50° 46' 30.6147"	-000° 35' 17.7946"
22	50° 38' 31.7775"	-000° 16' 26.9705"	118	50° 46' 30.8922"	-000° 35' 11.1291"
23	50° 38' 13.3227"	-000° 16' 17.0707"	119	50° 46' 31.4453"	-000° 35' 4.5064"
24	50° 38' 41.3993"	-000° 14' 22.9538"	120	50° 46' 32.2718"	-000° 34' 57.9549"
25	50° 39' 19.2087"	-000° 11' 18.3535"	121	50° 46' 33.3681"	-000° 34' 51.5025"
26	50° 39' 19.3373"	-000° 11' 17.7245"	122	50° 46' 34.7296"	-000° 34' 45.1770"
27	50° 39' 19.5025"	-000° 11' 16.9170"	123	50° 46' 35.4901"	-000° 34' 42.2812"
28	50° 39' 19.6186"	-000° 11' 16.3492"	124	50° 46' 35.5228"	-000° 34' 42.0236"
29	50° 39' 19.6908"	-000° 11' 15.9965"	125	50° 46' 35.5994"	-000° 34' 41.2888"
30	50° 39' 19.7648"	-000° 11' 15.6344"	126	50° 46' 35.6054"	-000° 34' 41.2313"
31	50° 39' 20.4130"	-000° 11' 12.4655"	127	50° 46' 35.9055"	-000° 34' 38.5822"

32	50° 39' 20.4164"	-000° 11' 12.4490"	128	50° 46' 36.0094"	-000° 34' 37.7299"
33	50° 39' 20.6912"	-000° 11' 11.1054"	129	50° 46' 36.5355"	-000° 34' 33.8272"
34	50° 39' 20.6985"	-000° 11' 11.0695"	130	50° 46' 37.0004"	-000° 34' 30.8806"
35	50° 39' 20.7558"	-000° 11' 10.7896"	131	50° 46' 37.0010"	-000° 34' 30.8770"
36	50° 39' 20.7809"	-000° 11' 10.6668"	132	50° 46' 37.1267"	-000° 34' 30.0528"
37	50° 39' 20.8160"	-000° 11' 10.4952"	133	50° 46' 37.6810"	-000° 34' 26.8347"
38	50° 39' 20.8414"	-000° 11' 10.3711"	134	50° 46' 37.7138"	-000° 34' 26.5748"
39	50° 39' 20.8985"	-000° 11' 10.2572"	135	50° 46' 38.0846"	-000° 34' 24.1951"
40	50° 39' 20.8985"	-000° 11' 10.0916"	136	50° 46' 38.3829"	-000° 34' 22.3753"
41	50° 39' 20.9320"	-000° 11' 9.9280"	137	50° 46' 38.8484"	-000° 34' 19.6871"
42	50° 39' 20.9471"	-000° 11' 9.8540"	138	50° 46' 38.9607"	-000° 34' 19.0720"
43	50° 39' 20.9846"	-000° 11' 9.6706"	139	50° 46' 39.2202"	-000° 34' 17.6871"
44	50° 39' 21.0187"	-000° 11' 9.5038"	140	50° 46' 40.5811"	-000° 34' 11.3611"
45	50° 39' 21.0425"	-000° 11' 9.3875"	141	50° 46' 41.8814"	-000° 34' 6.3216"
46	50° 39' 21.0907"	-000° 11' 9.1519"	142	50° 46' 42.2559"	-000° 34' 4.9738"
47	50° 39' 21.1078"	-000° 11' 9.0682"	143	50° 46' 42.5759"	-000° 34' 3.8412"
48	50° 39' 21.1552"	-000° 11' 8.8368"	144	50° 46' 42.9023"	-000° 34' 2.7225"
49	50° 39' 21.1689"	-000° 11' 8.7697"	145	50° 46' 43.3239"	-000° 34' 1.3002"
50	50° 39' 21.1691"	-000° 11' 8.7686"	146	50° 46' 44.3721"	-000° 33' 57.9966"
51	50° 39' 21.2393"	-000° 11' 8.4254"	147	50° 46' 44.3810"	-000° 33' 57.9636"
52	50° 39' 21.2579"	-000° 11' 8.3345"	148	50° 46' 45.2637"	-000° 33' 55.0152"
53	50° 39' 21.2944"	-000° 11' 8.1562"	149	50° 46' 45.5808"	-000° 33' 53.9984"
54	50° 39' 21.3304"	-000° 11' 7.9801"	150	50° 46' 46.0305"	-000° 33' 52.5844"
55	50° 39' 21.3412"	-000° 11' 7.9272"	151	50° 46' 46.4507"	-000° 33' 51.2883"
56	50° 39' 22.1787"	-000° 11' 3.8321"	152	50° 46' 46.9907"	-000° 33' 49.6586"
57	50° 39' 22.8501"	-000° 11' 0.5488"	153	50° 46' 47.8546"	-000° 33' 47.2974"

58	50° 39' 22.8994"	-000° 11' 0.3078"	154	50° 46' 48.2437"	-000° 33' 46.1079"
59	50° 39' 22.9375"	-000° 11' 0.1216"	155	50° 46' 49.1345"	-000° 33' 43.6730"
60	50° 39' 22.9921"	-000° 10' 59.8545"	156	50° 46' 49.4912"	-000° 33' 39.3906"
61	50° 39' 23.0026"	-000° 10' 59.8033"	157	50° 46' 50.3164"	-000° 33' 32.8380"
62	50° 39' 23.0301"	-000° 10' 59.6688"	158	50° 46' 51.1191"	-000° 33' 27.9509"
63	50° 39' 23.0417"	-000° 10' 59.6121"	159	50° 46' 51.3096"	-000° 33' 26.8988"
64	50° 39' 23.0889"	-000° 10' 59.3814"	160	50° 46' 51.3391"	-000° 33' 26.6492"
65	50° 36' 40.5733"	-000° 10' 7.2790"	161	50° 46' 51.5789"	-000° 33' 24.7195"
66	50° 35' 56.8348"	-000° 12' 29.9698"	162	50° 46' 51.6477"	-000° 33' 24.1929"
67	50° 35' 46.1905"	-000° 13' 4.6597"	163	50° 46' 51.7030"	-000° 33' 23.6624"
68	50° 35' 26.4347"	-000° 14' 9.0079"	164	50° 46' 51.7067"	-000° 33' 23.6272"
69	50° 35' 44.1096"	-000° 20' 10.6548"	165	50° 46' 52.2817"	-000° 33' 18.8380"
70	50° 36' 25.6547"	-000° 21' 2.8378"	166	50° 46' 52.2855"	-000° 33' 18.8103"
71	50° 36' 27.9442"	-000° 21' 5.7145"	167	50° 46' 52.3480"	-000° 33' 16.5867"
72	50° 36' 33.7315"	-000° 21' 12.9867"	168	50° 46' 52.3819"	-000° 33' 15.6368"
73	50° 36' 36.0255"	-000° 21' 15.9940"	169	50° 46' 52.4500"	-000° 33' 14.2166"
74	50° 36' 42.3253"	-000° 21' 24.2532"	170	50° 46' 52.3827"	-000° 33' 13.4068"
75	50° 36' 50.0795"	-000° 21' 34.4205"	171	50° 46' 52.2788"	-000° 33' 12.3576"
76	50° 35' 29.7384"	-000° 34' 43.2949"	172	50° 46' 52.1807"	-000° 33' 11.5423"
76	50° 37' 0.5901"	-000° 21' 48.2036"	173	50° 46' 52.1397"	-000° 33' 11.1979"
77	50° 37' 2.6269"	-000° 21' 50.8749"	174	50° 46' 52.0974"	-000° 33' 10.8392"
78	50° 37' 26.1929"	-000° 22' 21.7880"	175	50° 46' 51.8731"	-000° 33' 8.8265"
79	50° 37' 27.1480"	-000° 22' 23.0411"	176	50° 46' 51.3468"	-000° 33' 2.6428"
80	50° 36' 38.8171"	-000° 27' 24.4229"	177	50° 46' 51.3360"	-000° 33' 2.4787"
81	50° 36' 16.5551"	-000° 29' 46.1531"	178	50° 46' 51.3359"	-000° 33' 2.4775"
82	50° 36' 12.3786"	-000° 30' 12.7043"	179	50° 46' 51.2831"	-000° 33' 1.9360"

83	50° 35' 33.2206"	-000° 34' 21.0588"	180	50°46' 51.0907"	-000° 32' 59.8173"
84	50° 35' 29.7384"	-000° 34' 43.2949"	181	50° 46' 50.8304"	-000° 32' 56.7205"
85	50° 35' 11.5476"	-000° 36' 40.5405"	182	50° 46' 50.6907"	-000° 32' 54.9373"
86	50° 35' 8.6938"	-000° 36' 58.9128"	183	50° 46' 50.5692"	-000° 32' 53.2671"
87	50° 35' 8.5860"	-000°37' 35.2466"	184	50° 46' 50.5517"	-000° 32' 53.0243"
88	50° 35' 15.1952"	-000° 37' 36.0920"	185	50° 46' 50.4801"	-000° 32' 52.0184"
89	50° 35' 17.9985"	-000° 37' 36.4578"	186	50° 46' 50.4366"	-000° 32' 51.4437"
90	50° 35' 18.0869"	-000° 37' 36.4693"	187	50° 46' 50.4028"	-000° 32' 51.0278"
91	50° 35' 25.0537"	-000° 37' 37.3783"	188	50° 46' 50.3262"	-000° 32' 50.1580"
92	50° 35' 31.1113"	-000° 37' 38.1688"	189	50° 46' 50.1892"	-000° 32' 48.5032"
93	50° 35' 52.0407"	-000° 37' 40.9002"	190	50° 46' 50.1151"	-000° 32' 47.5480"
94	50° 36' 22.3039"	-000° 37' 44.8508"	191	50° 46' 49.9511"	-000° 32' 45.2090"
95	50° 46' 49.8007"	-000° 32' 42.0835"			
96	50° 36' 36.3272"	-000° 37' 46.6819"			

(4) that part of the offshore Order limits seaward of MLWS where those parts of the authorised project comprising Work No. 5 may be carried out as shown on the works plan are specified below—

Table 4

<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>
1	50° 47' 54.8542"	-000° 32' 41.2745"	44	50° 46' 46.9907"	-000° 33' 49.6586"
2	50° 47' 47.1541"	-000° 32' 41.3703"	45	50° 46' 46.4507"	-000° 33' 51.2883"
3	50° 47' 24.0826"	-000° 32' 41.6574"	46	50° 46' 46.0305"	-000° 33' 52.5844"
4	50° 46' 49.8007"	-000° 32' 42.0835"	47	50° 46' 45.5808"	-000° 33' 53.9984"
5	50° 46' 49.9511"	-000° 32' 45.2090"	48	50° 46' 45.2637"	-000° 33' 55.0152"
6	50° 46' 50.1151"	-000° 32' 47.5480"	49	50° 46' 44.3810"	-000° 33' 57.9636"
7	50° 46' 50.1892"	-000° 31' 48.5032"	50	50° 46' 44.3721"	-000° 33' 57.9966"
8	50° 46' 50.3262"	-000° 32' 50.1580"	51	50° 46' 43.3239"	-000° 34' 1.3002"
9	50° 46' 50.4028"	-000° 32' 51.0278"	52	50° 46' 42.9023"	-000° 34' 2.7225"
10	50° 46' 50.4366"	-000° 32' 51.4437"	53	50° 46' 42.5759"	-000° 34' 3.8412"

11	50° 46' 50.4801"	-000° 32' 52.0184"	54	50° 46' 42.2559"	-000° 34' 4.9738"
12	50° 46' 50.5517"	-000° 32' 53.0243"	55	50° 46' 41.8814"	-000° 34' 6.3216"
13	50° 46' 50.5692"	-000° 32' 53.2671"	56	50° 46' 40.5811"	-000° 34' 11.3611"
14	50° 46' 50.6907"	-000° 32' 54.9373"	57	50° 46' 39.2202"	-000° 34' 17.6871"
15	50° 46' 50.8304"	-000° 32' 56.7205"	58	50° 46' 38.9607"	-000° 34' 19.0720"
16	50° 46' 51.0907"	-000° 32' 59.8173"	59	50° 46' 38.8484"	-000° 34' 19.6871"
17	50° 46' 51.2831"	-000° 33' 1.9360"	60	50° 46' 38.3829"	-000° 34' 22.3753"
18	50° 46' 51.3359"	-000° 33' 2.4775"	61	50° 46' 38.0846"	-000° 34' 24.1951"
19	50° 46' 51.3360"	-000° 33' 2.4787"	62	50° 46' 37.7138"	-000° 34' 26.5748"
20	50° 46' 51.3468"	-000° 33' 2.6428"	63	50° 46' 37.6810"	-000° 34' 26.8347"
21	50° 46' 51.8731"	-000° 33' 8.8265"	64	50° 46' 37.1267"	-000° 34' 30.0528"
22	50° 46' 52.0974"	-000° 33' 10.8392"	65	50° 46' 37.0010"	-000° 34' 30.8770"
23	50° 46' 52.1397"	-000° 33' 11.1979"	66	50° 46' 37.0004"	-000° 34' 30.8806"
24	50° 46' 52.1807"	-000° 33' 11.5423"	67	50° 46' 36.5355"	-000° 34' 33.8272"
25	50° 46' 52.2788"	-000° 33' 12.3576"	68	50° 46' 36.0094"	-000° 34' 37.7299"
26	50° 46' 52.3827"	-000° 33' 13.4068"	69	50° 46' 35.9055"	-000° 34' 38.5822"
27	50° 46' 52.4500"	-000° 33' 14.2166"	70	50° 46' 35.6054"	-000° 34' 41.2313"
28	50° 46' 52.3819"	-000° 33' 15.6368"	71	50° 46' 35.5994"	-000° 34' 41.2888"
29	50° 46' 52.3480"	-000° 33' 16.5867"	72	50° 46' 35.5228"	-000° 34' 42.0236"
30	50° 46' 52.2855"	-000° 33' 18.8103"	73	50° 46' 35.4901"	-000° 34' 42.2812"
31	50° 46' 52.2817"	-000° 33' 18.8380"	74	50° 46' 34.7296"	-000° 34' 45.1770"
32	50° 46' 51.7067"	-000° 33' 23.6272"	75	50° 46' 33.3681"	-000° 34' 51.5025"
33	50° 46' 51.7030"	-000° 33' 23.6624"	76	50° 46' 32.2718"	-000° 34' 57.9549"
34	50° 46' 51.6477"	-000° 33' 24.1929"	77	50° 46' 31.4453"	-000° 35' 4.5064"
35	50° 46' 51.5789"	-000° 33' 24.7195"	78	50° 46' 30.8922"	-000° 35' 11.1291"
36	50° 46' 51.3391"	-000° 33' 26.6492"	79	50° 46' 30.6147"	-000° 35' 17.7946"
37	50° 46' 51.3096"	-000° 33' 26.8988"	80	50° 46' 30.6142"	-000° 35' 24.4745"

38	50° 46' 51.1191"	-000° 33' 27.9509"	81	50° 46' 30.8906"	-000° 35' 31.1402"
39	50° 46' 50.3164"	-000° 33' 32.8380"	82	50° 46' 31.3325"	-000° 35' 36.4412"
40	50° 46' 49.4912"	-000° 33' 39.3906"	83	50° 46' 50.5124"	-000° 35' 32.2424"
41	50° 46' 49.1345"	-000° 33' 43.6730"	84	50° 47' 32.2233"	-000° 35' 23.1074"
42	50° 46' 48.2437"	-000° 33' 46.1079"	85	50° 47' 32.8858"	-000° 35' 22.9623"
43	50° 46' 47.8546"	-000° 33' 47.2974"			

6. This licence remains in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 (approval of decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of sections 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 5 (benefit of the Order) of the Order.

8. With respect to any condition which requires the authorised scheme to be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. Any amendments to or variations from the approved plans, protocols or statements must be in accordance with the principles and assessments set out in the environmental statement and approval for an amendment or variation may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the MMO that the amendment or variation is unlikely to give rise to any materially worse environmental effects from those assessed in the environmental statement.

PART 2

CONDITIONS

Design parameters

- 1.—(1) There must be no more than 3 offshore substations.
- (2) The dimensions of any offshore substation forming part of the authorised scheme must be no more than—
 - (a) 65 metres in height when measured from LAT and 115 metres in height with lightning protection and ancillary structures;
 - (b) 80 metres in length; and
 - (c) 50 metres in width.
- (3) There must be no offshore substation located within 500 metres of the array periphery.
- (4) Offshore substation foundation structures forming part of the authorised scheme must comprise either monopile foundations or multileg foundations.
- (5) Offshore substation installations with—
 - (a) multileg foundation employing pin piles forming part of the authorised scheme are to have—
 - (i) no more than 6 legs per foundation;
 - (ii) no more than 12 pin piles per foundation; and
 - (iii) a pin pile diameter of no greater than 4.5 metres; and
 - (b) monopile foundation forming part of the authorised scheme may have a diameter no greater than 13.5 metres.

(6) The total volume of scour protection to be used as associated development for the offshore substations comprising Work No. 3(a) must be no more than 65,700 cubic metres with a maximum footprint of 21,900 square metres.

2.—(1) The total number of cable circuits comprising Work Nos. 3(b), and 4 to 6 must be no more than four.

(2) The total length of the interconnector cables comprising Work No. 3(b) must be no more than 40 kilometres.

(3) The total volume of cable protection comprising Work No. 3(b) must be no more 110,500 cubic metres with a maximum footprint of 122,000 square metres.

(4) The total length of cable circuits comprising Work Nos. 3(b), 4 and 5 together must be no more than 170 kilometres.

(5) The total volume of cable protection comprising to be used as development associated with Work Nos. 4 and 5 must be no more than 470,000 cubic metres with a maximum footprint of 517,000 square metres.

(6) Any cable protection authorised under this licence must be deployed within 10 years from commencement of the authorised scheme unless otherwise agreed in writing with the MMO.

(7) The cable circuits comprising Work Nos. 3(b) and 4 must be installed using one or more of the following installation methods: ploughing, trenching or jetting and are to be installed at a target burial depth of 1 metre below seabed surface.

(8) The cable circuits comprising Work Nos. 5 are to emerge in HDD exit pits and be laid on or beneath the seabed or in ducts laid on or beneath the seabed.

(9) The cable circuits comprising Work No. 6 must be installed underground and beneath the seabed by horizontal directional drilling.

Maintenance of the authorised project

3.—(1) No less than four months prior to the completion of construction of the authorised scheme the undertaker must submit to the MMO for approval an operations and maintenance plan which accords with the outline operations and maintenance plan.

(2) The undertaker may at any time maintain the authorised scheme, except to the extent that this licence or an agreement made under this licence provides otherwise. All operation and maintenance activities shall be carried out in accordance with the approved operations and maintenance plan unless otherwise agreed in writing between the undertaker and the MMO.

(3) No maintenance works whose likely effects are not assessed in the environmental statement may be carried out, unless otherwise approved by the MMO.

(4) Maintenance works include but are not limited to—

- (a) major offshore substation platform replacement;
- (b) painting offshore substation platforms;
- (c) bird waste removal;
- (d) cable remedial burial;
- (e) export cable and interconnector cable repairs;
- (f) access ladder replacement; and
- (g) J-tube repair/replacement.

(5) Where the MMO's approval is required under paragraph (3), approval may be given only where it has been demonstrated to the satisfaction of the MMO that the works for which approval is sought are unlikely to give rise to any materially worse environmental effects from those assessed in the environmental statement.

Extension of time periods

4. Any time period given in this licence given to either the undertaker or the MMO may be extended with the written agreement of the other party.

Notifications and inspections

- 5.—(1) The undertaker must ensure that—
- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with condition 15; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 15; and
 - (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.
- (2) Only those persons and vessels notified to the MMO in accordance with condition 15 are permitted to carry out the authorised scheme.
- (3) Copies of this licence must also be available for inspection at the following locations—
- (a) the undertaker's registered address;
 - (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
 - (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.
- (4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.
- (5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.
- (6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the authorised scheme or any part thereof and within five days of the completion of the authorised scheme.
- (7) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised scheme—
- (a) at least 14 days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
 - (b) completion of construction of all offshore activities within five days thereof,
- and confirmation of notification must be provided to the MMO within five days thereof.
- (8) A notice to mariners must be issued at least 14 days prior to the commencement of the authorised scheme or any part thereof advising of the relevant start date and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO, MCA and UKHO within five days.
- (9) Local notifications to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works (unless otherwise agreed in writing) and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under condition 11(1)(b). Copies of all notices must be provided to the MMO, MCA and UKHO within five days.
- (10) The undertaker must notify the UK Hydrographic Office of completion of construction (within 14 days) of the authorised scheme in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO and the MCA within five days.
- (11) In case of damage to, or destruction or decay of, the authorised project or any part thereof excluding the exposure of cable circuits the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, MCA, Trinity House, the Kingfisher Information Service of Seafish and the UK Hydrographic Office and issue a notice to mariners and regional fisheries contacts.
- (12) In case of a cable circuit exposure on or above the seabed, the undertaker must within three days following identification by the undertaker notify mariners by issuing a notice to mariners, regional fisheries contacts and notify

the Kingfisher Information Service of Seafish of the location of the exposure and copies of all such notices must be provided to the MMO, MCA, Trinity House and UKHO within five days.

Aids to navigation

6.—(1) The undertaker must during the whole period from commencement of the authorised scheme to completion of decommissioning exhibit such lights, marks, sounds, signals and other aids to navigation and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must during the period from the start of construction of the authorised scheme to completion of decommissioning of the authorised scheme keep Trinity House, the MMO, MCA and UKHO informed of progress of the authorised scheme including the following—

- (a) notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within five days of completion of construction of the authorised scheme.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to condition 11(1)(o) using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the authorised scheme to completion of decommissioning of the authorised scheme notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of condition 5(11) or 5(12) are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

Colour of Structures

7.—(1) The undertaker must colour all structures yellow (colour code RAL 1023) from at least highest astronomical tide to a height directed by Trinity House, or must colour the structure as directed by Trinity House from time to time.

(2) Subject to sub-paragraph (1) above, unless the MMO otherwise directs, the undertaker must ensure that the remainder of the structures are painted light grey (colour code RAL 7035).

Aviation safety

8.—(1) The undertaker must exhibit such lights, with such shape, colour and character as are required in writing by Air Navigation Order 2016(a) and determined necessary for aviation safety following consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority. Lighting installed specifically to meet Ministry of Defence aviation safety requirements must remain operational for the life of the authorised scheme unless otherwise agreed with the Ministry of Defence.

(2) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, the Civil Aviation Authority, NATS (En Route) plc and the MMO, at least 14 days prior to the commencement of the authorised scheme, in writing of the following information)—

- (a) the date of the commencement of construction of the authorised scheme;
- (b) the maximum height of any construction equipment to be used;
- (c) the maximum heights of any offshore substation to be constructed; and
- (d) the latitude and longitude of each offshore substation and wind turbine generator to be constructed,

and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised scheme. Copies of such notifications

(a) S.I. 2016/765

must be provided to the MMO within five working days of the notification to the Defence Infrastructure Organisation Safeguarding.

(3) Within 14 days of the commencement of construction of the authorised scheme the undertaker must submit an operational lighting scheme for the lighting of structures above 60 metres in height to the Defence Infrastructure Organisation Safeguarding and the Civil Aviation Authority which must include the proposed intensity levels.

(4) The authorised scheme must not be brought into commercial operation unless and until the lighting scheme submitted pursuant to sub-paragraph (3) has been approved and implemented.

(5) The lights installed in accordance with paragraph (1) and (4) will be operated at the lowest permissible lighting intensity level.

Chemicals, drilling and debris

9.—(1) Unless otherwise agreed in writing by the MMO all chemicals and substances including paints and coatings used below the MHWS for the undertaking of the licensed activities must be approved in writing by the MMO prior to use. Submission for approval to the MMO must take place no later than ten weeks prior to use, unless otherwise agreed to by the MMO in writing.

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The undertaker must ensure that only inert material of natural origin, drilling mud and dredged material, produced during the drilling installation of or seabed preparation for foundations, and sandwave clearance works is disposed of within the extent of the offshore Order limits. Any material of anthropogenic origin will be screened out and disposed of at an appropriate waste facility onshore. The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order by reference to the disposal site identifier agreed with the MMO, by submission of a disposal return by 15 February each year for the months August to January inclusive, and by 15 August each year for the months February to July inclusive.

(4) The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(5) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker must report the loss to the MMO Local Office within 48 hours and if the MMO reasonably considers following consultation with the MCA and Trinity House, such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(6) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(7) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan approved under condition 11(1)(d)(i).

(8) All dropped objects must be reported to the MMO using the dropped object procedure form as soon as reasonably practicable and in any event within 24 hours following the undertaker becoming aware of an incident. On receipt of the dropped object procedure form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and on receipt of such surveys the MMO may require obstructions which are hazardous to other marine users to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

10.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life or if the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

11.—(1) The authorised scheme or any part thereof must not commence until the following (insofar as relevant to that activity) has been submitted to and approved in writing by the MMO, following consultation with Trinity House and the MCA (where relevant)—

- (a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, which shows—
 - (i) the proposed location, including grid co-ordinates of the centre point of the proposed location for each wind turbine generator permitted pursuant to licence 1 (generation), offshore substation and the array periphery and choice of foundation types and depths for all offshore substations;
 - (ii) the number, specifications and dimensions of the offshore substations;
 - (iii) the proposed length location and arrangement of interconnector cables and export cables comprising Work Nos. 3 to 6 targeting areas of seabed that maximise cable burial;
 - (iv) the dimensions of all monopile foundations or multileg foundations;
 - (v) any exclusion zones/environmental micro-siting requirements due to marine heritage constraints, environmental constraints or difficult ground conditions discovered post approval under this condition 11 (pre-construction plans and documentation) and condition 16 (pre-construction surveys); and
 - (vi) that the details set out in relation to (i) to (v) above do not prevent that part of the wind farm separation zone oriented north to south being open and navigable for all vessels and compliant with Marine Guidance Note (MGN) 654,

to ensure conformity with the description of Work Nos. 3 to 6 and compliance with conditions 1 to 3 above;

- (b) a construction programme to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works; and
 - (iii) an indicative written construction programme for all offshore substations and cable circuit installation works comprised in Work Nos. 3 to 6 at paragraph 3 of Part 1 (licenced marine activities) of this Schedule (insofar as not shown in paragraph (ii) above),

unless otherwise agreed in writing with the MMO;

- (c) a construction method statement in accordance with the construction methods assessed in the environmental statement including details of—
 - (i) foundation installation methodology, including whether or not gravel bags will be used, a dredging protocol, piling methods including maximum proposed hammer energy, drilling methods and disposal of drill arisings and material extracted to include seabed preparation for foundation installation works where relevant;
 - (ii) advisory safe passing distances for vessels around construction sites;
 - (iii) advisory exclusion zones during any piling activities;
 - (iv) cable installation method including a dredging protocol, export cable and interconnector cable installation works and minimisation of direct and indirect seabed disturbance footprint for the export cable and interconnector cables;
 - (v) any exclusion zones/environmental micro-siting requirements for cable circuit routing;
 - (vi) contractors;
 - (vii) vessels and vessels transit corridors;
 - (viii) associated ancillary works;
 - (ix) guard vessels to be employed; and
 - (x) carbon measuring and reporting;
- (d) a project environment management plan which accords with the outline project environment management plan, which shall be submitted to the MMO at least six months prior to commencement of the authorised scheme or the relevant part thereof and is to include details of—

- (i) a marine pollution contingency plan, which accords with the outline marine pollution contingency plan, to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised scheme in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) a marine biosecurity plan detailing how the risk of introduction and spread of invasive non-native species will be minimised; and
 - (iv) waste management and disposal arrangements;
- (e) a vessel traffic monitoring strategy which accords with the outline vessel traffic monitoring strategy comprising part of the offshore in-principle monitoring plan which is to include—
 - (i) vessel traffic monitoring by automatic identification system for the duration of the construction period;
 - (ii) post-construction vessel traffic monitoring by automatic identification system for the period of three consecutive years following the completion of construction of authorised scheme; and
 - (iii) submission of a report to the MMO, Trinity House and the MCA at the end of each year of the construction period and the following three years post-construction;
- (f) a vessel management plan including a code of conduct for vessel operators which shall incorporate the Working in Proximity to Wildlife in the Marine Environment Protocol which shall apply during both construction and the operational lifetime of the authorised scheme;
- (g) a fisheries liaison and co-existence plan which accords with the outline fisheries and co-existence plan;
- (h) a diver communication plan which accords with the outline diver communication plan;
- (i) a scour protection and cable protection plan which accords with the outline scour protection and cable protection plan providing details of the need, type, sources, quantity and installation methods for scour protection, which must be updated and resubmitted for approval if changes to it are proposed following cable laying operations;
- (j) a monitoring plan which accords with the offshore in-principle monitoring plan and is to detail proposals for pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting;
- (k) a sensitive features mitigation plan which accords with the in principle sensitive features mitigation plan which shall be submitted to the MMO at least six months prior to commencement of the authorised scheme or the relevant part thereof and is to include spatial and temporal restrictions on piling activities;
- (l) in the event that driven or part-driven pile foundations are proposed to be used:
 - (i) the hammer energy used to drive or part-drive the pile foundations must not exceed-
 - (aa) 4,400kJ in respect to monopile foundations; and
 - (bb) 2,500kJ in respect of pin piles;
 - (ii) a piling marine mammal mitigation protocol which accords with the draft piling marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, including details of soft start procedures with specified duration periods following current best practice as advised by the relevant statutory nature conservation bodies;
- (m) a UXO marine mammal mitigation protocol which accords with the draft UXO marine mammal mitigation protocol;
- (n) a cable specification and installation plan which accords with the outline cable specification and installation plan, to include—
 - (i) technical specification of offshore cable circuits on or below the seabed, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable circuit burial depth in accordance with industry good practice;
 - (ii) a sandwave and other seabed clearance plan for all designated sites affected, including details of the volumes of material to be dredged, timing of works, locations for disposal and monitoring proposals;
 - (iii) a detailed cable laying plan for the Order limits, incorporating a burial risk assessment which accords with the outline cable burial risk assessment, encompassing the identification of any cable protection that exceeds 5% of navigable depth referenced to Chart Datum and, in the event that any area of cable

protection exceeding 5% of navigable depth is identified, details of any steps (to be determined following consultation with the MCA and Trinity House) to be taken to ensure existing and future safe navigation is not compromised or similar such assessment to ascertain suitable burial depths and cable circuit laying techniques, including cable protection;

- (iv) proposals for the volume and areas of cable protection to be used for each cable crossing (if any) and arrangements for crossing and proximity agreements to be put in place with existing subsea pipelines and cable operators; and
- (v) proposals for monitoring offshore cable circuits including cable protection during the operational lifetime of the authorised scheme which includes a risk based approach to the management of unburied or shallow buried cable circuits; and
- (o) an aid to navigation management plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of condition 6 (aids to navigation) from the commencement of construction of the authorised scheme to the completion of decommissioning.

(2) The authorised scheme must not commence unless no later than six months prior to the commencement a written scheme of archaeological investigation has been submitted to and approved by the MMO following consultation with West Sussex County Council (in relation to those part of the offshore Order limits landwards of mean low water springs) and the statutory historic body, in accordance with the outline marine written scheme of investigation, and in accordance with industry good practice, following consultation with the statutory historic body to include—

- (a) details of responsibilities of the undertaker, archaeological consultant and contractor;
- (b) a methodology for further site investigation and surveys including any target locations and specifications for geophysical geotechnical and diver or remotely operated vehicle investigations, removal of archaeological finds if required, and including for unexploded ordnance;
- (c) archaeological analysis of high resolution survey data, and timetable for reporting, which is to be submitted to the MMO within six months of any survey being completed;
- (d) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones prior to construction;
- (e) monitoring of archaeological exclusion zones during and post construction;
- (f) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the Archaeological Data Service, by submitting an OASIS ('Online Access to the Index of archaeological investigations') form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO and the statutory historic body that the OASIS form has been submitted to the Archaeological Data Service within two weeks of submission;
- (g) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and
- (h) a timetable for further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the relevant parts of the offshore Order limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.

(3) Pre-commencement surveys and archaeological investigations and pre-commencement material operations which involve intrusive activities must only take place in accordance with a specific outline marine written scheme of investigation (which must accord with the details set out in the outline marine written scheme of investigation) which has been submitted to and approved by the MMO.

12.—(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 11 (save for that required under condition 11(1)(j)) must be submitted for approval at least four months prior to the intended commencement of the relevant part of the authorised scheme, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) The monitoring plan required under condition 11(1)(j) must be submitted in accordance with the following, unless otherwise agreed in writing with the MMO—

- (a) at least six months prior to the first survey, detail of any pre-construction surveys and an outline of all proposed monitoring;

- (b) at least six months prior to construction, detail on construction monitoring; and
- (c) at least six months prior to commissioning, detail of post-construction (and operational) monitoring.

(3) The MMO must determine an application for approval made under condition 11 within a period of four months commencing on the date the application is received by the MMO, except where an application is required to be made no less than six months prior to the intended commencement of the authorised scheme or relevant activity in which case the MMO must determine the application for approval within the period of six months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(4) No part of the authorised scheme may commence until for the relevant part of the authorised scheme the MMO has approved in writing any relevant programme, statement, plan, protocol or scheme required to be approved under condition 11.

(5) The authorised scheme must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 11, unless otherwise agreed in writing by the MMO.

Safety Zones

13.—(1) The authorised scheme or relevant part thereof must not commence until (insofar as relevant to the licensed activity) an application has been made to the Secretary of State for a safety zone pursuant to the Energy Act 2004.

Offshore safety management

14. No part of the authorised scheme may commence until the MMO, following consultation with the MCA, has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN654 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes.

Reporting of engaged agents, contractors and vessels

15.—(1) The undertaker must provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the authorised scheme no less than 24 hours before the agent, contractor or subcontractor carries out any part of the authorised scheme; and
- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the authorised scheme.

(2) Any changes to the name and function of the specified agent, contractor or subcontractor that will carry out the specified licensed activities or vessel to be used must be notified to the MMO in writing prior to the agent, contractor, subcontractor or vessel carrying out the authorised scheme.

(3) The undertaker must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to any agents, contractors or subcontractors that will carry out the part of the authorised scheme on behalf of the undertaker prior to them carrying out any licensed activity.

Pre-construction monitoring and surveys

16.—(1) The undertaker must, in discharging condition 11(1)(j) in respect of pre-construction surveys and monitoring, provide details of proposed surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report and—

- (a) the survey proposals must be in accordance with the principles set out in the offshore in-principle monitoring plan and must specify each survey’s objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, the pre-construction survey proposals must have due regard to the need to undertake—

- (a) a full sea floor coverage swath-bathymetry survey undertaken to IHO Order 1a standard that meets the requirements of MGN654 and its annexes, and side scan sonar of those parts of the offshore Order limits in which it is proposed to carry out the authorised scheme including proposed cable locations and an appropriate buffer. This should fulfil the requirements of MGN654 and its supporting ‘Hydrographic Guidelines for Offshore Renewable Energy Developers’, which includes the requirement for the full density data and reports to be delivered to the MCA and the UKHO for the update of nautical charts and publications;
- (b) a survey to determine the location, extent and composition of chalk habitats, stony reef and potential Sabellaria spinulosa reef features, potential nesting sites for black seabream, and peat and clay exposures as set out within the offshore in-principle monitoring plan;
- (c) inform future navigation risk assessments as part of the cable specification and installation plan; and
- (d) inform the identification of any archaeological exclusion zone and post consent monitoring of any such archaeological exclusion zone.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the baseline report to the MMO in the agreed format and in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO and submitted to the MCA in a form approved pursuant to MGN 654.

Construction monitoring

17. The undertaker must in discharging condition 11(1)(j) for the monitoring plan for the construction phase provide details of any proposed construction monitoring, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in accordance with the principles set out in the offshore in-principle monitoring plan and must specify each survey’s objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

Post-construction monitoring

18.—(1) The undertaker must, in discharging condition 11(1)(j), submit a monitoring plan for the post-construction monitoring providing details of proposed post-construction surveys, including methodologies (including appropriate buffers, where relevant) and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in accordance with the offshore in-principle monitoring plan and must specify each survey’s objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement and is to include a survey to determine the location, extent and composition of and Sabellaria spinulosa reef and potential nesting sites for black seabream.

(2) The surveys to be undertaken pursuant to sub-paragraph (1) above must include a swath bathymetric survey to IHO Order 1a of those parts of the offshore Order limits where the authorised scheme has been constructed and provide the data and survey report(s) to the MCA and UKHO. This should fulfil the requirements of MGN654 and its supporting ‘Hydrographic Guidelines for Offshore Renewable Energy Developers’, which includes the requirement for the full density data and reports to be delivered to the MCA and the UKHO for the update of nautical charts and publications.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO.

(4) Within 12 weeks of completion of any cable repair or replacement works, the undertaker must undertake a post installation survey along the section of cable that has undergone repair or replacement undertaken to IHO Order 1a standard to demonstrate the successful burial of the cable, and submit a report to the MMO, the MCA and Trinity House on its findings.

(5) In the event that the reports provided to the MMO under sub-paragraph (3) identify impacts which are unanticipated and/or beyond those predicted within the Environmental Statement and the Habitats Regulations Assessment an adaptive management plan to reduce effects to within what was predicted within the Environmental Statement and the Habitats Regulations Assessment, unless otherwise agreed by the MMO in writing, must be submitted alongside the monitoring reports submitted under sub-paragraph (3). This plan must be agreed by the MMO

in consultation with the relevant statutory nature conservation bodies to reduce effects to an agreed suitable level for this project. Any such agreed and approved adaptive management or mitigation should be implemented and monitored in full to a timetable first agreed in writing with the MMO. In the event that this adaptive management or mitigation requires a separate consent, the undertaker shall apply for such consent. Where a separate consent is required to undertake the agreed adaptive management or mitigation, the undertaker shall only be required to undertake the adaptive management or mitigation once the consent is granted.

Timing of monitoring report

19. Any monitoring report compiled in accordance with the monitoring plans provided under conditions 11 must be provided to the MMO no later than four months following completion of the monitoring to which it relates, unless otherwise agreed in writing with the MMO.

Updating of cable monitoring plan

20. Following installation of cable circuits, the cable monitoring plan required under condition 11(1)(n)(v) must be updated with the results of the post-installation surveys. The plan must be implemented during the operational lifetime of the project and reviewed as specified within the plan, following cable burial surveys, or as instructed in writing by the MMO.

Piling

21.—(1) In the event that driven or part-driven pile foundations are proposed to be used any such piling must be undertaken in accordance with—

- (a) the piling marine mammal mitigation protocol approved under condition 11(1)(l); and
- (b) the sensitive features mitigation plan approved under condition 11(1)(k).

Reporting of cable protection

22.—(1) Not more than four months following completion of the construction phase of the project, the undertaker must provide the MMO and the statutory nature conservation body with a report setting out details of the cable protection used for the authorised scheme.

(2) The report is to include the following information—

- (a) location of the cable protection;
- (b) volume of cable protection; and
- (c) any other information relating to the cable protection as agreed between the MMO and the undertaker.

Decommissioning

23.—(1) Prior to any decommissioning activities being undertaken the undertaker must submit and secure the written approval of the MMO for a decommissioning mammal protection protocol (Decommissioning MPP).

(2) The Decommissioning MPP must be implemented as approved.

Completion of construction

24.—(1) The undertaker must submit a close out report to the MMO, MCA, UK Hydrographic Office and the statutory nature conservation body within three months of the date of completion of construction. The close out report must confirm the date of completion of construction and must include the following details—

- (a) the final number of installed offshore substations;
- (b) a plan of the layout of installed offshore substations;
- (c) latitude and longitude coordinates of the centre point of the location of each offshore substation provided as Geographical Information System data referenced to WGS84 datum;
- (d) latitude and longitude coordinates of the export cable route provided as Geographical Information System data referenced to WGS84 datum; and

- (e) the installed offshore substation parameters relevant for seascape landscape and visual impact.
- (2) Following completion of construction, no further construction activities can be undertaken under this licence.

Reporting of impact pile driving

25.—(1) Only when driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry—

- (a) prior to the commencement of each part of construction of the authorised scheme, information on the expected location and expected start and end dates of impact pile driving to satisfy the Marine Noise Registry’s Forward Look requirements; and
- (b) within 12 weeks of completion of impact pile driving for the relevant part of the authorised scheme, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry’s Close Out requirements.

(2) The undertaker must notify the MMO in writing of the successful submission of Forward Look or Close Out data pursuant to paragraph (1) above within seven days of the submission.

(3) For the purpose of this condition, “Forward Look” and “Close Out” mean the requirements as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) as amended, updated or superseded from time to time.

Piling restriction

26.—There shall be no piling associated with the authorised development between the dates of 1 March to 31 July inclusive, unless otherwise agreed to by the MMO and the statutory nature conservation body.

SCHEDULE 13

Article 44

HEDGEROWS

PART 1

REMOVAL OF HEDGEROWS

<i>(1) Area</i>	<i>(2) Location of hedgerow as shown on the tree preservation order and hedgerow plan</i>
Arun District	H10 shown on sheet 2
Arun District	H13 shown on sheet 2
Arun District	H16 shown on sheet 2
Arun District	H22 shown on sheet 3
Arun District	H27 shown on sheet 4
Arun District	H600 shown on sheet 5
Arun District	H601 shown on sheet 5
Arun District	H531 shown on sheet 7
South Downs National Park	H540 shown on sheet 8
South Downs National Park	H541 shown on sheet 8
South Downs National Park	H545 shown on sheet 11
South Downs National Park	H546 shown on sheet 11
South Downs National Park	H548 shown on sheet 11
South Downs National Park	H551 shown on sheet 11
South Downs National Park	H553 shown on sheet 11
South Downs National Park	H589 shown on sheet 11

South Downs National Park	H590 shown on sheet 11
South Downs National Park	H129 shown on sheet 20
South Downs National Park	H135 shown on sheet 20
South Downs National Park	H146A shown on sheet 21
South Downs National Park	H157 shown on sheet 21
South Downs National Park	H158 shown on sheet 22
South Downs National Park	H161 shown on sheet 21
South Downs National Park	H162 shown on sheet 22
South Downs National Park	H163 shown on sheet 22
South Downs National Park	H165 shown on sheet 21
South Downs National Park	H166 shown on sheet 21
South Downs National Park	H167 shown on sheet 22
South Downs National Park	H172 shown on sheet 21
South Downs National Park	H179 shown on sheets 22 and 23
South Downs National Park	H185 shown on sheet 22
Horsham District	H197 shown on sheet 22
Horsham District	H201a shown on sheet 24
Horsham District	H202 shown on sheet 23
Horsham District	H206a shown on sheet 21
Horsham District	H210 shown on sheet 24
Horsham District	H211 shown on sheet 24
Horsham District	H214 shown on sheet 24
Horsham District	H219 shown on sheet 24
Horsham District	H220 shown on sheet 24
Horsham District	H229 shown on sheet 24
Horsham District	H230 shown on sheet 25
Horsham District	H235 shown on sheet 25
Horsham District	H237 shown on sheet 25
Horsham District	H246 shown on sheet 25
Horsham District	H247 shown on sheet 26
Horsham District	H257 shown on sheet 26
Horsham District	H263 shown on sheet 27
Horsham District	H266 shown on sheet 27
Horsham District	H269 shown on sheet 27
Horsham District	H271 shown on sheet 27
Horsham District	H277 shown on sheet 27
Horsham District	H295 shown on sheet 28
Horsham District	H297 shown on sheet 28
Horsham District	H302 shown on sheet 28
Horsham District	H309 shown on sheet 28
Horsham District	H312 shown on sheet 28
Horsham District	H317 shown on sheet 28
Horsham District	H349 shown on sheet 29
Horsham District	H358 shown on sheet 29
Horsham District	H359 shown on sheet 29
Horsham District	H363 shown on sheet 29
Horsham District	H373 shown on sheet 29
Horsham District	H378 shown on sheets 28 and 29
Horsham District	H380 shown on sheets 28 and 29
Horsham District	H383 shown on sheet 30
Horsham District	H384 shown on sheet 30

Horsham District	H406 shown on sheet 30
Horsham District	H422 shown on sheet 30
Horsham District	H424 shown on sheet 30
Horsham District	H433 shown on sheet 31
Horsham District	H475 shown on sheet 32
Horsham District	H476 shown on sheet 32
Horsham District	H482 shown on sheet 32
Horsham District	H497 shown on sheet 33
Horsham District	H505 shown on sheet 33
Horsham District	H511 shown on sheet 33
Horsham District	H512 shown on sheet 33
Horsham District	H514 shown on sheet 33
Horsham District	H516 shown on sheet 33
Horsham District	H520b shown on sheet 33
Horsham District	H610 shown on sheet 33
Horsham District	H612 shown on sheet 33
Horsham District	H613 shown on sheet 25
Mid-Sussex District	H469 shown on sheet 34
Mid-Sussex District	H489 shown on sheet 34

PART 2

REMOVAL OF IMPORTANT HEDGEROWS

<i>(1) Area</i>	<i>(2) Reference of hedgerow as shown on the tree preservation and hedgerow plan</i>
Arun District	H521 shown on sheet 5
Arun District	H527 shown on sheet 6
Arun District	H528 shown on sheet 6
South Downs National Park	H549 shown on sheet 10 and 11
South Downs National Park	H168 shown on sheet 22
South Downs National Park	H181 shown on sheet 23
Horsham District	H228 shown on sheet 24
Horsham District	H245 shown on sheet 25
Horsham District	H308 shown on sheet 28
Horsham District	H372 shown on sheet 29
Horsham District	H377 shown on sheet 29
Horsham District	H464b shown on sheet 32
Horsham District	H474 shown on sheet 32
Horsham District	H481 shown on sheets 32 and 33
Horsham District and Mid-Sussex District	H507 shown on sheet 33
Horsham District	H509 shown on sheet 33
Horsham District	H515 shown on sheet 33
Mid-Sussex District	H456 shown on sheet 34

PROCEDURE FOR DISCHARGE OF CERTAIN APPROVALS**Applications made for certain approvals**

1.—(1) Where an application has been made to a discharging authority for any consent, agreement or approval required or contemplated by any of the requirements in Part 3 of Schedule 1 (requirements) of this Order the undertaker must—

- (a) give the discharging authority sufficient information to identify the requirement(s) to which the application relates; and
- (b) provide such particulars, plans and drawings as are reasonably considered necessary to deal with the application.

(2) The discharging authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(3) For the purposes of this paragraph the decision period is—

- (a) where no further information is requested under paragraph 2 (further information), 56 days from the day immediately following that on which the application is received by the discharging authority;
- (b) where further information is requested under paragraph 2 (further information), 56 days from the day immediately following that on which the further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in sub-paragraph 3(a) or (b).

Further information

2.—(1) In relation to any application to which this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is reasonably necessary to enable it to consider the application.

(2) If the discharging authority considers such further information to be necessary it must, as soon as reasonably practicable and in any event within 20 business days of receipt of the application notify the undertaker in writing specifying the further information required.

(3) If the discharging authority does not give such notification as specified in sub-paragraph (2) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

Fees

3.—(1) Where an application is made to the discharging authority for consent, agreement or approval in respect of a requirement, the fee for the discharge of conditions as specified in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (or any regulations replacing the same) is to be paid by the undertaker to the relevant discharging authority.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 42 days of—

- (a) the application being rejected as invalidly made; or
- (b) the discharging authority failing to determine the application within the decision period as determined under paragraph 1, unless within that period the undertaker agrees, in writing, that the fee is to be retained by the discharging authority and credited in respect of a future application.

Appeals

4.—(1) The undertaker may appeal to the Secretary of State in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required or contemplated by any of the requirements in Part 3 of Schedule 1 (requirements) of this Order or grants it subject to conditions;
- (b) the discharging authority does not give notice of its decision to the undertaker within the decision period specified in paragraph 1 (applications made for certain approvals);
- (c) on receipt of a request for further information under paragraph 2 (further information) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the decision period as determined under paragraph 1;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority and the relevant requirement consultees (if applicable);
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the discharging authority and the requirement consultees must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under sub-paragraph 2(c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person; and
- (e) the appeal parties are to make any counter-submissions to the appointed person within 20 business days of receipt of written representations under sub-paragraph 2(d).

(3) The appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(4) The appointment of the person pursuant to sub-paragraph (c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(5) If the appointed person considers that further information is necessary to enable consideration of the appeal the appointed person must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(6) Any further information required under sub-paragraph (5) is to be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.

(7) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(8) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the prescribed time limits, or set by the appointed person under this paragraph.

(9) The appointed person may proceed to a decision even though no written representations have been made within the prescribed time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(10) The decision of the appointed person on an appeal is to be final and binding on the appeal parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(11) If an approval is given by the appointed person under this Schedule, it is deemed to be an approval for the purpose of any consent, agreement or approval for the purpose of Part 3 of Schedule 1 (requirements) as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(12) Except where a direction is given under sub-paragraph (13) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the undertaker.

(13) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance published by the Department for Energy Security and Net Zero or any circular or guidance which may from time to time replace it.

Interpretation of Schedule 15

5. In this Schedule—

“the appeal parties” means the discharging authority, the undertaker and any requirement consultees;

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday;

“discharging authority” means the relevant body responsible for approving details pursuant to a requirement which is the subject of an appeal; and

“requirement consultee” means any body named in a requirement which is the subject of an appeal as a body to be consulted by the discharging authority in discharging that requirement.

SCHEDULE 15

Article 48

ARBITRATION RULES

Primary objective

1.—(1) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the Parties (save as to costs) within four months from the date the Arbitrator is appointed pursuant to article 48 (arbitration) of the Order.

(2) The Parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the relevant Parties. Any dispute which is not resolved amicably by the senior management of the relevant Parties within 20 business days of the dispute arising, or such longer period as agreed in writing by the Parties, are to be subject to arbitration in accordance with the terms of this Schedule.

(3) The Arbitration will be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

Time periods

2.—(1) All time periods in these Arbitration Rules will be measured in business days and this will exclude weekends, bank and public holidays.

(2) Time periods will be calculated from the day after the Arbitrator is appointed which will be either—

(a) the date the Arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or

(b) the date the Arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 15 days of the Arbitrator being appointed, the Claimant is to provide both the Respondent and the Arbitrator with—

- (a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant's contentions as to those issues, and the remedy it is seeking; and
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 15 days of receipt of the Claimant's statements under sub-paragraph (2) by the Arbitrator and Respondent, the Respondent is to provide the Claimant and the Arbitrator with—

- (a) a written Statement of Defence responding to the Claimant's Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant's claim, its acceptance of any element(s) of the Claimant's claim, and its contentions as to those elements of the Claimant's claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and
- (c) any objections it wishes to make to the Claimant's statements, comments on the Claimant's expert report(s) (if submitted by the Claimant) and explanations for the objections.

(4) Within five days of the Respondent serving its statements sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the Arbitrator with—

- (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
- (c) any expert report in response to the Respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The Arbitrator is to make an award on the substantive difference based solely on the written material submitted by the parties unless the Arbitrator decides that a hearing is necessary to explain or resolve any matters.

(2) Either party may, within two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(3) Within five days of receiving the last submission, the Arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(4) Within 10 days of the Arbitrator advising the parties that they will hold a hearing, the date and venue for the hearing will be fixed by agreement with the Parties, save that if there is no agreement the Arbitrator must direct a date and venue which they consider is fair and reasonable in all the circumstances. The date for the hearing is to be not less than 35 days from the date of the Arbitrator's direction confirming the date and venue of the hearing.

(5) A decision will be made by the Arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the Arbitrator, then any expert(s) attending the hearing may be asked questions by the Arbitrator.

(6) There will be no process of examination and cross-examination of experts, but the Arbitrator may invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the Arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) at least 20 days before a hearing, the Arbitrator will provide a list of issues to be addressed by the expert(s);

- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 10 days of the issues being provided; and
- (c) the form and content of a joint report will be as directed by the Arbitrator.

(7) Within 10 days of a Hearing or a decision by the Arbitrator that no hearing is to be held the Parties may by way of exchange provide the Arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The Arbitrator must take these submissions into account in the Award.

(8) The Arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within four months of the date on which they are appointed, unless both parties otherwise agree to an extension to the date for the award.

(9) If a party fails to comply with the timetable, procedure or any other direction then the Arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before them attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(10) The Arbitrator's award must include reasons. The parties will accept that the extent to which reasons are given is to be proportionate to the issues in dispute and the time available to the Arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The Arbitrator has all the powers of the Arbitration Act 1996^(a), including the non- mandatory sections, save where modified by these Rules.

(2) There is to be no discovery or disclosure, except that the Arbitrator will have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the Arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the Arbitrator may be varied by agreement between the Parties, subject to any such variation being acceptable to and approved by the Arbitrator. In the absence of agreement, the Arbitrator may vary the timescales and/or procedure—

- (a) if the Arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then; and
- (b) only for such a period that is necessary to achieve fairness between the Parties.

(4) On the date the award is made, the Arbitrator will notify the Parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the Arbitrator's fees and expenses.

Costs

6.—(1) The costs of the Arbitration are to include the fees and expenses of the Arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the Parties for the Arbitration.

(2) Subject to sub-paragraph (3), the Arbitrator will award recoverable costs on the general principle that each party should bear its own costs.

(3) The Arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it.

Confidentiality

7.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation is to be open to and accessible by the public.

(2) The Arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph prevents any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

(a) 1996 c. 23.

SCHEDULE 16

Article 51

DOCUMENTS TO BE CERTIFIED

PART 1

DOCUMENTS FORMING PART OF THE ENVIRONMENTAL STATEMENT TO BE CERTIFIED

<i>(1)</i> <i>Document</i> <i>Reference</i>	<i>(2)</i> <i>Examination</i> <i>Library</i> <i>Reference</i>	<i>(3)</i> <i>Document Name</i>	<i>(4)</i> <i>Version</i>	<i>(5)</i> <i>Date</i>
6.2.1	REP6-119	Environmental Statement – Volume 2 Chapter 1 Introduction	B	01 August 2024
6.2.2	REP6-141	Environmental Statement – Volume 2 Chapter 2 Policy and Legislative context	B	01 August 2024
6.2.3	REP6-163	Environmental Statement – Volume 2 Chapter 3 - Alternatives	B	01 August 2024
6.2.4	REP6-172	Environmental Statement – Volume 2 Chapter 4 The Proposed Development	B	01 August 2024
6.2.5	REP6-173	Environmental Statement – Volume 2 Chapter 5 Approach to the Environmental Impact Assessment	B	01 August 2024
6.2.6	REP6-175	Environmental Statement – Volume 2 Chapter 6 Coastal processes	B	01 August 2024
6.2.7	REP6-177	Environmental Statement – Volume 2 Chapter 7 Other marine users	B	01 August 2024
6.2.8	REP6-179	Environmental Statement – Volume 2 Chapter 8 Fish and shellfish ecology	C	01 August 2024
6.2.9	REP6-181	Environmental Statement – Volume 2 Chapter 9 Benthic, subtidal and intertidal ecology	D	01 August 2024
6.2.10	REP6-121	Environmental Statement – Volume 2 Chapter 10 Commercial fisheries	B	01 August 2024
6.2.11	REP6-123	Environmental Statement – Volume 2 Chapter 11 Marine mammals (clean)	E	01 August 2024
6.2.12	REP6-125	Environmental Statement – Volume 2 Chapter 12 Offshore and intertidal ornithology	B	01 August 2024
6.2.13	REP6-127	Environmental Statement – Volume 2 Chapter 13 Shipping and navigation	B	01 August 2024

6.2.14	REP6-129	Environmental Statement – Volume 2 Chapter 14 Civil and military aviation	B	01 August 2024
6.2.15	REP6-131	Environmental Statement – Volume 2 Chapter 15 Seascape, landscape and visual impact assessment	B	01 August 2024
6.2.16	REP6-133	Environmental Statement – Volume 2 Chapter 16 Marine archaeology	C	01 August 2024
6.2.17	REP6-135	Environmental Statement – Volume 2 Chapter 17 Socioeconomics	B	01 August 2024
6.2.18	REP6-137	Environmental Statement – Volume 2 Chapter 18 Landscape and visual impact	C	01 August 2024
6.2.19	REP6-139	Environmental Statement – Volume 2 Chapter 19 Air quality	B	01 August 2024
6.2.20	REP6-143	Environmental Statement – Volume 2 Chapter 20 Soils and agriculture	B	01 August 2024
6.2.21	REP6-145	Environmental Statement – Volume 2 Chapter 21 Noise and vibration (clean)	C	01 August 2024
6.2.22	REP6-147	Environmental Statement – Volume 2 Chapter 22 Terrestrial ecology and nature conservation	D	01 August 2024
6.2.23	REP6-149	Environmental Statement – Volume 2 Chapter 23 Transport	B	01 August 2024
6.2.24	REP6-151	Environmental Statement – Volume 2 Chapter 24 Ground conditions	B	01 August 2024
6.2.25	REP6-153	Environmental Statement – Volume 2 Chapter 25 Historic environment (clean)	D	01 August 2024
6.2.26	REP6-155	Environmental Statement – Volume 2 Chapter 26 Water environment	B	01 August 2024
6.2.27	REP6-157	Environmental Statement – Volume 2 Chapter 27 Major accidents and disasters	B	01 August 2024
6.2.28	REP6-159	Environmental Statement – Volume 2 Chapter 28 Population and human health	B	01 August 2024
6.2.29	REP6-161	Environmental Statement – Volume 2 Chapter 29 Climate change	B	01 August 2024
6.2.30	REP6-165	Environmental Statement – Volume 2 Chapter 30 Inter- related effects	B	01 August 2024
6.2.31	REP6-167	Environmental Statement – Volume 2 Chapter 31 Summary	B	01 August 2024

6.2.32	REP6-169	Environmental Statement – Volume 2 Chapter 32 ES Addendum	C	01 August 2024
6.3.1	APP-073	Environmental Statement – Volume 3 Chapter 1 Introduction - Figures	A	08 August 2023
6.3.1.1	APP-073	Rampion 2 ES Volume Figure 1.1 Proposed DCO Order limits	A	08 August 2023
6.3.2	APP-074	Environmental Statement – Volume 3 Chapter 2 Policy and legislative context – figures	A	08 August 2023
6.3.3	REP6-190	Environmental Statement – Volume 3 Chapter 3 Alternative – figures	B	01 August 2024
6.3.4	APP-076	Environmental Statement – Volume 3 Chapter 4 The Proposed Development – Figures (Part 1 of 2)	A	08 August 2023
6.3.4	APP-077	Environmental Statement – Volume 3 Chapter 4 The Proposed Development – Figures (Part 2 of 2)	A	08 August 2023
6.3.5	APP-078	Environmental Statement – Volume 3 Chapter 5 Approach to the Environmental Impact Assessment (EIA) – Figures	A	08 August 2023
6.3.6	APP-079	Environmental Statement – Volume 3 Chapter 6 Coastal processes – figures	A	08 August 2023
6.3.7	APP-080	Environmental Statement – Volume 3 Chapter 7 Other marine users – figures	A	08 August 2023
6.3.8	REP6-191	Environmental Statement – Volume 3 Chapter 8 Fish and shellfish – Figures	C	01 August 2024
6.3.9	REP2-010	Environmental Statement – Volume 3 Chapter 9 Benthic, subtidal and intertidal ecology - figures	B	20 March 2024
6.3.10	APP-083	Environmental Statement – Volume 3 Chapter 10 Commercial fisheries – figures	A	08 August 2023
6.3.11	APP-084	Environmental Statement – Volume 3 Chapter 11 Marine Mammals - figures	A	08 August 2023
6.3.12	APP-085	Environmental Statement – Volume 3 Chapter 12 Offshore and intertidal ornithology – figures	A	08 August 2023
6.3.13	APP-086	Environmental Statement – Volume 3 Chapter 13 Shipping and navigation – figures	A	08 August 2023
6.3.14	APP-087	Environmental Statement – Volume 3 Chapter 14 Civil and	A	08 August 2023

		military aviation study area – figures		
6.3.15	APP-088	Environmental Statement – Volume 3 Chapter 15 Seascape, landscape and visual impact assessment – figures (Part 1 of 8)	A	08 August 2023
6.3.15	APP-089	Environmental Statement – Volume 3 Chapter 15 Seascape, landscape and visual impact assessment – figures (Part 2 of 8)	A	08 August 2023
6.3.15	APP-090	Environmental Statement – Volume 3 Chapter 15 Seascape, landscape and visual impact assessment – figures (Part 3 of 8)	A	08 August 2023
6.3.15	APP-091	Environmental Statement – Volume 3 Chapter 15 Seascape, landscape and visual impact assessment – figures (Part 4 of 8)	A	08 August 2023
6.3.15	APP-092	Environmental Statement – Volume 3 Chapter 15 Seascape, landscape and visual impact assessment – figures (Part 5 of 8)	A	08 August 2023
6.3.15	APP-093	Environmental Statement – Volume 3 Chapter 15 Seascape, landscape and visual impact assessment – figures (Part 6 of 8)	A	08 August 2023
6.3.15	APP-094	Environmental Statement – Volume 3 Chapter 15 Seascape, landscape and visual impact assessment – figures (Part 7 of 8)	A	08 August 2023
6.3.15	APP-095	Environmental Statement – Volume 3 Chapter 15 Seascape, landscape and visual impact assessment – figures (Part 8 of 8)	A	08 August 2023
6.3.16	APP-096	Environmental Statement – Volume 3 Chapter 16 Marine archaeology – figures	A	08 August 2023
6.3.17	APP-097	Environmental Statement – Volume 3 Chapter 17 Socioeconomics - figures	A	08 August 2023
6.3.18	REP6-184	Environmental Statement – Volume 3 Chapter 18 landscape and visual impact assessment – figures (Part 1 of 6)	D	01 August 2024
6.3.18	REP6-185	Environmental Statement – Volume 3 Chapter 18 landscape and visual impact assessment – figures (Part 2 of 6)	D	01 August 2024

6.3.18	REP6-183	Environmental Statement – Volume 3 Chapter 18 landscape and visual impact assessment – figures (Part 3 of 6)	C	01 August 2024
6.3.18	REP6-186	Environmental Statement – Volume 3 Chapter 18 landscape and visual impact assessment – figures (Part 4 of 6)	D	01 August 2024
6.3.18	REP6-187	Environmental Statement – Volume 3 Chapter 18 landscape and visual impact assessment – figures (Part 5 of 6)	B	01 August 2024
6.3.18	REP6-188	Environmental Statement – Volume 3 Chapter 18 landscape and visual impact assessment – figures (Part 6 of 6)	D	01 August 2024
6.3.19	APP-104	Environmental Statement – Volume 3 Chapter 19 Air quality – figures	A	08 August 2023
6.3.20	APP-105	Environmental Statement – Volume 3 Chapter 20 Soils and agriculture – figures	A	08 August 2023
6.3.21	PEPD-022	Environmental Statement – Volume 3 Chapter 21 Noise and vibration – figures	B	16 January 2024
6.3.23	APP-107	Environmental Statement – Volume 3 Chapter 23 Transport – figures (Part 1 of 4)	A	08 August 2023
6.3.23	APP-108	Environmental Statement – Volume 3 Chapter 23 Transport – figures (Part 2 of 4)	A	08 August 2023
6.3.23	APP-109	Environmental Statement – Volume 3 Chapter 23 Transport – figures (Part 3 of 4)	A	08 August 2023
6.3.23	APP-110	Environmental Statement – Volume 3 Chapter 23 Transport – figures (Part 4 of 4)	A	08 August 2023
6.3.24	APP-111	Environmental Statement – Volume 3 Chapter 24 Ground conditions – figures	A	08 August 2023
6.3.25	APP-112	Environmental Statement – Volume 3 Chapter 25 Historic environment – figures (Part 1 of 5)	A	08 August 2023
6.3.25	APP-113	Environmental Statement – Volume 3 Chapter 25 Historic environment – figures (Part 2 of 5)	A	08 August 2023
6.3.25	REP4-031	Environmental Statement – Volume 3 Chapter 25 Historic environment – figures (Part 3 of 5)	B	03 June 2024
6.3.25	REP6-189	Environmental Statement – Volume 3 Chapter 25 Historic	C	01 August 2024

		environment – figures (Part 4 of 5)		
6.3.25	APP-116	Environmental Statement – Volume 3 Chapter 25 Historic environment – figures (Part 5 of 5)	A	08 August 2023
6.3.26	APP-117	Environmental Statement – Volume 3 Chapter 26 Water Environment – figures (Part 1 of 2)	A	08 August 2023
6.3.26	APP-118	Environmental Statement – Volume 3 Chapter 26 Water Environment – figures (Part 2 of 2)	A	08 August 2023
6.3.28	APP-119	Environmental Statement – Volume 3 Chapter 28 Population and human health – figures	A	08 August 2023
6.4.1.1	APP-120	Environmental Statement – Volume 4 Appendix 1.1 Competent experts	A	08 August 2023
6.4.3.1	APP-121	Environmental Statement – Volume 4 Appendix 3.1 Supporting information	A	08 August 2023
6.4.4.1	APP-122	Environmental Statement – Volume 4 Appendix 4.1 Crossing schedule	A	08 August 2023
6.4.4.2	APP-123	Environmental Statement – Volume 4 Appendix 4.1 Crossing schedule	A	08 August 2023
6.4.4.3	TBC	Environmental Statement – Volume 4 Appendix 4.3 Proposed Development parameters	B	01 August 2024
6.4.5.1	APP-125	Environmental Statement – Volume 4 Appendix 5.1 Planning Inspectorate’s scoping opinion	A	08 August 2023
6.4.5.2	APP-126	Environmental Statement – Volume 4 Appendix 5.2 Response to the Scoping Opinion	A	08 August 2023
6.4.5.3	APP-127	Environmental Statement – Volume 4 Appendix 5.3 Cumulative effects assessment detailed onshore search and screening criteria	A	08 August 2023
6.4.5.4	APP-128	Environmental Statement – Volume 4 Appendix 5.4 Cumulative effects assessment shortlisted developments	A	08 August 2023
6.4.6.1	APP-129	Environmental Statement – Volume 4 Appendix 6.1 Coastal processes technical report baseline description	A	08 August 2023

6.4.6.2	APP-130	Environmental Statement – Volume 4 Appendix 6.2 Coastal processes model design and validation	A	08 August 2023
6.4.6.3	REP5-044	Environmental Statement – Volume 4 Appendix 6.3 Coastal processes technical report impact assessment	B	09 July 2024
6.4.8.1	APP-132	Environmental Statement – Volume 4 Appendix 8.1 Herring annual heatmaps	A	08 August 2023
6.4.8.2	APP-133	Environmental Statement – Volume 4 Appendix 8.2 Black bream nests	A	08 August 2023
6.4.8.3	REP2-011	Environmental Statement – Volume 4 Appendix 8.3 Underwater noise study for sea bream disturbance	B	20 March 2024
6.4.8.4	PEPD-023	Environmental Statement – Volume 4 Appendix 8.4 Black seabream underwater noise technical note and survey results – Revision A	A	16 January 2024
6.4.9.1	APP-135	Environmental Statement – Volume 4 Appendix 9.1 Predictive seabed mapping methods reports	A	08 August 2023
6.4.9.2	APP-136	Environmental Statement – Volume 4 Appendix 9.2 Offshore wind farm intertidal habitats survey report	A	08 August 2023
6.4.9.3	APP-137	Environmental Statement – Volume 4 Appendix 9.3 Rampion 2 Offshore wind farm subtidal benthic characterisation survey report	A	08 August 2023
6.4.9.4	APP-138	Environmental Statement – Volume 4 Appendix 9.4 Geophysical survey Part 1 of 7	A	08 August 2023
6.4.9.4	APP-139	Environmental Statement – Volume 4 Appendix 9.4 Geophysical survey Part 2 of 7	A	08 August 2023
6.4.9.4	APP-140	Environmental Statement – Volume 4 Appendix 9.4 Geophysical survey Part 3 of 7	A	08 August 2023
6.4.9.4	APP-141	Environmental Statement – Volume 4 Appendix 9.4 Geophysical survey Part 4 of 7	A	08 August 2023
6.4.9.4	APP-142	Environmental Statement – Volume 4 Appendix 9.4 Geophysical survey Part 5 of 7	A	08 August 2023
6.4.9.4	APP-143	Environmental Statement – Volume 4 Appendix 9.4 Geophysical survey Part 6 of 7	A	08 August 2023

6.4.9.4	APP-144	Environmental Statement – Volume 4 Appendix 9.4 Geophysical survey Part 7 of 7	A	08 August 2023
6.4.9.5	APP-145	Rampion 2 ES Volume 4 Appendix 9.5 Technical Note Cable corridor area mitigation for sensitive features	A	08 August 2023
6.4.10.1	APP-146	Environmental Statement – Volume 4 Appendix 10.1 Commercial fisheries technical baseline report	A	08 August 2023
6.4.11.1	APP-147	Environmental Statement – Volume 4 Appendix 11.1 Marine mammal baseline technical report	A	08 August 2023
6.4.11.2	APP-148	Environmental Statement – Volume 4 Appendix 11.2 Marine mammal quantitative underwater noise impact assessment	A	08 August 2023
6.4.11.3	REP5-046	Environmental Statement – Volume 4 Appendix 11.3 Underwater noise assessment technical report	B	09 July 2024
6.4.11.4	TBC	Environmental Statement – Volume 4 Appendix 11.4 Bottlenose Dolphin Population Modelling	A	01 August 2024
6.4.12.1	APP-150	Environmental Statement – Volume 4 Appendix 12.1 Offshore and intertidal ornithology baseline technical report	A	08 August 2023
6.4.12.2	APP-151	Environmental Statement – Volume 4 Appendix 12.2 Offshore and intertidal ornithology displacement analysis	A	08 August 2023
6.4.12.3	APP-152	Environmental Statement – Volume 4 Appendix 12.3 Offshore and intertidal ornithology collision risk modelling	A	08 August 2023
6.4.12.4	APP-153	Environmental Statement – Volume 4 Appendix 12.4 Offshore and intertidal ornithology migratory collision risk modelling	A	08 August 2023
6.4.12.5	APP-154	Environmental Statement – Volume 4 Appendix 12.5 Offshore and intertidal ornithology population viability analysis	A	08 August 2023
8.25	REP4-065	Environmental Statement – Volume 4 Appendix 8 In-	B	3 June 2024

		combination Assessment update for Guillemot and Razorbill		
6.4.12.6	REP6-193	Environmental Statement – Volume 4 Appendix 12.6 Great Black-backed gull Cumulative assessment and PVA	A	01 August 2024
6.4.13.1	APP-155	Environmental Statement – Volume 4 Appendix 13.1 Navigational risk assessment	A	08 August 2023
6.4.14.1	APP-156	Environmental Statement – Volume 4 Appendix 14.1 Airspace analysis and radar modelling	A	08 August 2023
6.4.15.1	APP-157	Environmental Statement – Volume 4 Appendix 15.1 Seascape, landscape and visual impact assessment consultation responses	A	08 August 2023
6.4.15.2	APP-158	Environmental Statement – Volume 4 Appendix 15.2 Seascape, landscape and visual impact assessment methodology	A	08 August 2023
6.4.15.3	APP-159	Environmental Statement – Volume 4 Appendix 15.3 Simple seascape, landscape and visual impact assessment	A	08 August 2023
6.4.15.4	APP-160	Environmental Statement – Volume 4 Appendix 15.4 Viewpoint assessment	A	08 August 2023
6.4.15.5	APP-161	Environmental Statement – Volume 4 Appendix 15.5 Assessment of aviation and navigation night-time lighting	A	08 August 2023
6.4.15.6	PEPD-024	Environmental Statement – Volume 4 Appendix 15.6 Supplementary night-time viewpoint assessment	A	16 January 2024
6.4.16.1	REP3-017	Environmental Statement – Volume 4 Appendix 16.1 Marine archaeology technical report	B	25 April 2024
6.4.17.1	APP-163	Environmental Statement – Volume 4 Appendix 17.1 Socioeconomics method statement	A	08 August 2023
6.4.17.2	APP-164	Environmental Statement – Volume 4 Appendix 17.2 Socioeconomics cost and sourcing report	A	08 August 2023
6.4.17.3	APP-165	Environmental Statement – Volume 4 Appendix 17.3 Socioeconomics technical baseline	A	08 August 2023
6.4.17.4	APP-166	Environmental Statement – Volume 4 Appendix 17.4	A	08 August 2023

		Assessment of sensitivity of public rights of way		
6.4.18.1	APP-167	Environmental Statement – Volume 4 Appendix 18.1 Landscapes and visual impact assessment methodology	A	08 August 2023
6.4.18.2	REP6-194	Environmental Statement – Volume 4 Appendix 18.2 Viewpoint analysis	D	01 August 2024
6.4.18.3	REP6-196	Environmental Statement – Volume 4 Appendix 18.3 Landscape assessment	C	01 August 2024
6.4.18.4	REP6-198	Environmental Statement – Volume 4 Appendix 18.4 Visual assessment	C	01 August 2024
6.4.18.5	REP6-200	Environmental Statement – Volume 4 Appendix 18.5 Residential visual amenity assessment	C	01 August 2024
6.4.18.6	REP4-035	Environmental Statement – Volume 4 Appendix 18.6 Viewpoint directory	B	03 June 2024
6.4.19.1	APP-173	Environmental Statement – Volume 4 Appendix 19.1 Full results of construction road traffic modelling	A	08 August 2023
6.4.19.2	APP-174	Environmental Statement – Volume 4 Appendix 19.2 Full results of construction plant modelling	A	08 August 2023
6.4.20.1	APP-175	Environmental Statement – Volume 4 Appendix 20.1 Detailed agricultural land classification report	A	08 August 2023
6.4.21.1	PEPD-025	Environmental Statement – Volume 4 Appendix 21.1 Baseline sound report (clean)	B	16 January 2024
6.4.21.2	PEPD-027	Environmental Statement – Volume 4 Appendix 21.2 Construction plant list (clean)	B	16 January 2024
6.4.21.3	APP-178	Environmental Statement – Volume 4 Appendix 21.3 Preliminary operational noise predictions	A	08 August 2023
6.4.22.1	APP-179	Environmental Statement – Volume 4 Appendix 22.1 Policy and legislation tables	A	08 August 2023
6.4.22.2	APP-180	Environmental Statement – Volume 4 Appendix 22.2 Terrestrial ecology desk study	A	08 August 2023
6.4.22.3	APP-181	Environmental Statement – Volume 4 Appendix 22.3 Extended phase 1 habitat survey report	A	08 August 2023

6.4.22.4	APP-182	Environmental Statement – Volume 4 Appendix 22.4 National vegetation classification survey report 2021-2022	A	08 August 2023
6.4.22.5	APP-183	Environmental Statement – Volume 4 Appendix 22.5 Hedgerow survey report	A	08 August 2023
6.4.22.6	APP-184	Environmental Statement – Volume 4 Appendix 22.6 Fisheries habitat survey report	A	08 August 2023
6.4.22.7	APP-185	Environmental Statement – Volume 4 Appendix 22.7 Great crested newt environmental DNA survey report 2021 – 2023	A	08 August 2023
6.4.22.8	APP-186	Environmental Statement – Volume 4 Appendix 22.8 Passive and active bat activity report	A	08 August 2023
6.4.22.9	APP-187	Environmental Statement – Volume 4 Appendix 22.9 Hazel dormouse report 2020 – 2022	A	08 August 2023
6.4.22.10	APP-188	Environmental Statement – Volume 4 Appendix 22.10 Invertebrate survey report	A	08 August 2023
6.4.22.11	APP-189	Environmental Statement – Volume 4 Appendix 22.11 Badger, otter and water vole survey reports (NON- CONFIDENTIAL)	A	08 August 2023
6.4.22.12	APP-190	Environmental Statement – Volume 4 Appendix 22.12 Reptile survey	A	08 August 2023
6.4.22.13	APP-191	Environmental Statement – Volume 4 Appendix 22.13 Breeding bird survey	A	08 August 2023
6.4.22.14	APP-192	Environmental Statement – Volume 4 Appendix 22.14 Onshore winter bird report 2020 – 2022	A	08 August 2023
6.4.22.15	REP6-204	Environmental Statement – Volume 4 Appendix 22.15 Biodiversity net gain information	D	01 August 2024
6.4.22.16	REP5-058	Environmental Statement – Volume 4 Appendix 22.16 Arboricultural impact assessment	C	09 July 2024
6.4.22.17	APP-195	Environmental Statement – Volume 4 Appendix 22.17 Bat tree ground level visual assessment survey report	A	08 August 2023
6.4.22.18	PEPD-029	Environmental Statement – Volume 4 Appendix 22.18	A	16 January 2024

		Passive and active bat activity report 2023		
6.4.22.19	PEPD-030	Environmental Statement – Volume 4 Appendix 22.19 Hazel dormouse report 2023	A	16 January 2024
6.4.23.1	REP6-206	Environmental Statement – Volume 4 Appendix 23.1 Abnormal indivisible loads assessment	B	01 August 2024
6.4.23.2	REP6-208	Environmental Statement – Volume 4 Appendix 23.2 Traffic generation technical note (clean)	E	01 August 2024
6.4.24.1	APP-198	Environmental Statement – Volume 4 Appendix 24.1 Phase 1 geo-environmental desk study	A	08 August 2023
6.4.25.1	APP-199	Environmental Statement – Volume 4 Appendix 25.1 Gazetteer of 14 Onshore heritage assets	A	08 August 2023
6.4.25.2	APP-200	Environmental Statement – Volume 4 Appendix 25.2 Onshore historic environment desk study Part 1 of 2	A	08 August 2023
6.4.25.2	APP-201	Environmental Statement – Volume 4 Appendix 25.2 Onshore historic environment desk study Part 2 of 2	A	08 August 2023
6.4.25.3	APP-202	Environmental Statement – Volume 4 Appendix 25.3 Onshore desk-based geoarchaeological and paleoenvironmental assessment report	A	08 August 2023
6.4.25.4	PEPD-031	Environmental Statement – Volume 4 Appendix 25.4 Onshore geophysical survey report Part 1 of 8 (clean)	B	16 January 2024
6.4.25.4	PEPD-113	Environmental Statement – Volume 4 Appendix 25.4 Onshore geophysical survey report Part 2 of 8	B	16 January 2024
6.4.25.4	PEPD-114	Environmental Statement – Volume 4 Appendix 25.4 Onshore geophysical survey report Part 3 of 8	B	16 January 2024
6.4.25.4	PEPD-115	Environmental Statement – Volume 4 Appendix 25.4 Onshore geophysical survey report Part 4 of 8	B	16 January 2024
6.4.25.4	PEPD-116	Environmental Statement – Volume 4 Appendix 25.4 Onshore geophysical survey report Part 5 of 8	B	16 January 2024

6.4.25.4	PEPD-117	Environmental Statement – Volume 4 Appendix 25.4 Onshore geophysical survey report Part 6 of 8	B	16 January 2024
6.4.25.4	PEPD-118	Environmental Statement – Volume 4 Appendix 25.4 Onshore geophysical survey report Part 7 of 8	B	16 January 2024
6.4.25.4	PEPD-119	Environmental Statement – Volume 4 Appendix 25.4 Onshore geophysical survey report Part 8 of 8 Revision B (Clean)	B	16 January 2024
6.4.25.5	APP-211	Environmental Statement – Volume 4 Appendix 25.5 Oakendene parkland historic landscape assessment	A	08 August 2023
6.4.25.6	APP-212	Environmental Statement – Volume 4 Appendix 25.6 Archaeological trial trenching at Brook Barn Farm	A	08 August 2023
6.4.25.7	APP-213	Environmental Statement – Volume 4 Appendix 25.7 Settings assessment scoping report	A	08 August 2023
6.4.25.8	APP-214	Environmental Statement – Volume 4 Appendix 25.8 Onshore heritage asset baseline report	A	08 August 2023
6.4.26.1	APP-215	Environmental Statement – Volume 4 Appendix 26.1 Detailed water environment baseline information	A	08 August 2023
6.4.26.2	REP4-039	Environmental Statement – Volume 4 Appendix 26.2 Flood risk assessment	B	03 June 2024
6.4.26.3	APP-217	Environmental Statement – Volume 4 Appendix 26.3 Water framework directive compliance assessment	A	08 August 2023
6.4.26.4	APP-218	Environmental Statement – Volume 4 Appendix 26.4 Hydrological risk assessment	A	08 August 2023
6.4.28.1	APP-219	Environmental Statement – Volume 4 Appendix 28.1 Human health baseline	A	08 August 2023
6.4.28.2	APP-220	Environmental Statement – Volume 4 Appendix 28.2 Electro magnetic field health evidence base	A	08 August 2023
6.4.28.3	APP-221	Environmental Statement – Volume 4 Appendix 28.3 Equalities impact assessment	A	08 August 2023
6.4.29.1	APP-222	Environmental Statement – Volume 4 Appendix 29.1	A	08 August 2023

		Supporting data for the green house green assessment		

PART 2

OTHER DOCUMENTS TO BE CERTIFIED

<i>(1)</i> <i>Document Reference</i>	<i>(2)</i> <i>Examination Library Reference</i>	<i>(3)</i> <i>Document Name</i>	<i>(4)</i> <i>Version</i>	<i>(5)</i> <i>Date</i>
2.1.2	AS-025	Land plans Onshore	C	18 July 2024
2.2.1	PEPD-004	Offshore works plans	B	16 January 2024
2.2.2	AS-026	Onshore works plans	C	18 July 2024
2.4	AS-027	Special category land plans	C	18 July 2024
2.5	REP6-004	Access rights of way and streets plan	C	01 August 2024
2.6	REP6-005	Tree preservation order and hedgerow plan	F	01 August 2024
2.7	APP-014	Open access land plan	A	08 August 2023
2.11	APP-018	Offshore Order limits and grid co-ordinates plan	A	08 August 2023
4.3	REP6-016	Rampion 2 Book of Reference (clean)	D	01 August 2024
5.8	REP5-023	Design and access statement	C	09 July 2024
7.1	REP5-062	Outline operational drainage plan	D	09 July 2024
7.2	REP6-224	Rampion 2 Outline code of construction practice (clean)	G	01 August 2024
7.3	APP-225	Outline site waste management plan	A	08 August 2023
7.4	REP5-066	Outline soils management plan	C	09 July 2024
7.5	APP-227	Outline operational travel plan	A	08 August 2023
7.6	REP6-231	Outline construction traffic management plan	G	01 August 2024
7.7	REP3-031	Outline onshore construction workforce travel plan (clean)	B	25 April 2024
7.8	REP3-033	Outline public rights of way management plan (clean)	B	25 April 2024
7.9	REP5-070	Outline onshore written scheme of investigation	C	09 July 2024
7.10	REP6-212	Outline landscape and ecology management plan	E	01 August 2024
7.11	REP6-214	Outline project environmental management plan	C	01 August 2024
7.12	REP5-074	Outline scour protection and cable protection plan (clean)	C	09 July 2024
7.13	REP6-216	Outline marine written schemes of investigation (clean)	D	01 August 2024
7.14	REP6-218	Draft piling marine mammal mitigation protocol	C	01 August 2024
7.15	REP5-078	Draft UXO marine mammal mitigation protocol	B	09 July 2024
7.16	REP5-080	Outline offshore operations and maintenance plan	C	09 July 2024

7.17	REP5-082	In-principle sensitive features mitigation plan	E	09 July 2024
7.18	REP6-220	Offshore in-principle monitoring plan	E	01 August 2024
7.19	REP6-222	Outline fisheries liaison and co-existence plan (clean)	C	01 August 2024
7.20	APP-242	Outline diver communications plan	A	08 August 2023
7.21	APP-243	Evidence plan (Part 1 of 11)	A	08 August 2023
7.21	APP-244	Evidence plan (Part 2 of 11)	A	08 August 2023
7.21	APP-245	Evidence plan (Part 3 of 11)	A	08 August 2023
7.21	APP-246	Evidence plan (Part 4 of 11)	A	08 August 2023
7.21	APP-247	Evidence plan (Part 5 of 11)	A	08 August 2023
7.21	APP-248	Evidence plan (Part 6 of 11)	A	08 August 2023
7.21	APP-249	Evidence plan (Part 7 of 11)	A	08 August 2023
7.21	APP-250	Evidence plan (Part 8 of 11)	A	08 August 2023
7.21	APP-251	Evidence plan (Part 9 of 11)	A	08 August 2023
7.21	APP-252	Evidence plan (Part 10 of 11)	A	08 August 2023
7.21	APP-253	Evidence plan (Part 11 of 11)	A	08 August 2023
7.22	REP6-226	Commitments register	F	01 August 2024
7.23	REP6-229	Outline construction method statement	C	01 August 2024
7.24	PEPD-037	Outline skills and employment strategy	B	16 January 2024
8.86	REP5-124	Outline construction communication plan	A	09 July 2024
8.87	REP6-269	Outline vegetation retention and removal plan	C	01 August 2024
8.88	REP5-126	Outline cable specification and installation plan	A	09 July 2024
8.85	REP5-123	Outline cable burial risk assessment	A	09 July 2024
8.105	REP6-236	Horsham District mitigation and enhancement principles document	A	01 August 2024
8.106	REP6-237	National Park enhancement and furtherance principles document	A	01 August 2024
8.95	REP6-273	Public rights of way and landscape enhancement principles document	B	01 August 2024
8.25.10	REP1-028	Appendix 10 – Further information for Action Point 42 – Proximity to marine wildlife	A	28 February 2024
8.60	REP5-111	Outline noise and vibration management plan	B	09 July 2024
8.62	REP6-258	Outline air quality management plan	C	01 August 2024
8.64	REP5-115	Kittiwake implementation and monitoring plan	B	July 2024
8.89	REP6-271	Guillemot and Razorbill Implementation and Monitoring Plan	B	August 2024

SCHEDULE 17

COMPENSATION TO PROTECT THE COHERENCE OF THE NATIONAL SITE NETWORK

PART 1

KITTIWAKE COMPENSATION

1. In this Part 1 of Schedule 17—

“the FFC SPA” means the site designated as the Flamborough and Filey Coast Special Protection Area;

“Final KIMP” means the final kittiwake compensation implementation and monitoring plan for the delivery of measures to compensate for the predicted loss of adult kittiwakes from the FFC SPA as a result of the authorised development which shall accord with the principles identified in the kittiwake implementation and monitoring plan;

“Kittiwake implementation and monitoring plan” means the document certified as the kittiwake implementation and monitoring plan by the Secretary of State for the purpose of this Order under article 51 (certification of plans and documents etc);

“the Marine Recovery Fund” means the fund to be established and operated by Defra pursuant to the Offshore Wind Environmental Improvement Package of the British Energy Security Strategy (April 2022) for the implementation of strategic compensation or any equivalent fund established by a Government body for that purpose;

“Marine Recovery Fund Payment” means a contribution to the Marine Recovery Fund to compensate for the predicted loss of adult kittiwakes from the FFC SPA as a result of the authorised development the sum of which shall be calculated in accordance with any guidance issued by Defra or otherwise to be agreed with the Secretary of State

“the OKEG” means an offshore kittiwake engagement group which has been or shall be established to assist, through consultation, the undertaker and the developer of any other project with whom the undertaker is to collaborate in the delivery of the onshore kittiwake compensation measures; and

“the onshore kittiwake compensation measure” means measures which improve kittiwake habitat within or outside the FFC SPA onshore, or improve breeding success through reducing avian predation.

2. No offshore works are to commence until the undertaker has confirmed in writing to the Secretary of State whether it will—

- (a) make a Marine Recovery Fund Payment, or
- (b) submit a Final KIMP to the Secretary of State for approval.

3. Where the undertaker elects to submit a Final KIMP no offshore works are to commence until a plan for the work of the OKEG has been submitted to and approved by the Secretary of State, such plan to include—

- (a) the identity of, or the arrangements for establishment of, the OKEG;
- (b) its terms of reference;
- (c) its membership will shall (as a minimum) include the local planning authority for the area in which the onshore kittiwake compensation measure is to be provided and SNCB as core members and the RSPB as advisory member;
- (d) details of the proposed schedule of meetings, reporting and review periods; and
- (e) the dispute resolution mechanism and confidentiality provisions.

4. Following consultation with OKEG, the Final KIMP must be submitted to and approved by the Secretary of State.

5. The Final KIMP (if required) must be based on the strategy for kittiwake compensation set out in the kittiwake implementation and monitoring plan and include—

- (a) the location where the compensation measures will be delivered and the suitability of that location (including why the location is appropriate ecologically and likely to support successful compensation), and confirmation that the necessary landowner agreement(s) are in place;
- (b) where the compensation measures comprise an artificial nesting structure details of the capacity of such structure(s) and its ability to accommodate at least 10 additional nesting spaces for pairs of kittiwake to compensate for the impact of the authorised development on the population of the FFC SPA;
- (c) an implementation timetable for delivery including any arrangements made with a third party for implementation of the measures provided that if the measures comprise an artificial nesting structure that has already been delivered the details submitted shall comprise confirmation as to when the structure was completed;
- (d) details of any contribution to be made to a third party to ongoing management and maintenance of the compensation measures delivered in collaboration with a third party;
- (e) details for the ongoing monitoring and reporting of the effectiveness of the compensation measures identified in the Final KIMP including—
 - (i) survey methods;
 - (ii) survey programmes;
 - (iii) success criteria; and
 - (iv) timescales for the monitoring reports to be delivered;
- (f) details of any adaptive management measures, with details of the factors used to trigger any alternative and/or adaptive management measures; and
- (g) confirmation as to how it has had regard to output of consultation with OKEG.

6. Where the Final KIMP identifies the provision of artificial nesting structures in collaboration with one or more other offshore wind farm projects the details submitted pursuant to paragraph 5(b) and (e) shall identify how the effectiveness of the compensation measures and any requirement for adaptive management measures are to be attributed to the authorised development.

The undertaker must implement the measures set out in the Final KIMP approved by the Secretary of State, unless otherwise agreed by the Secretary of State following consultation with the relevant statutory nature conservation body, and the local planning authority for the area in which the onshore kittiwake compensation measure is to be provided.

8. No operation of any wind turbine generator forming part of the authorised development may begin until the Final KIMP has been implemented, and completed (where appropriate) and has been notified to the Secretary of State, and where the compensation comprises an artificial nesting structure this has been in place for at least four full kittiwake breeding seasons prior to such operation. For the purposes of this paragraph each breeding season is assumed to have commenced on 1 March in each year and ended on 31 August.

9. Where the undertaker has confirmed that it shall make a payment to the Marine Recovery Fund there shall be no operation of a wind turbine generator unless and until the Marine Recovery Fund Payment has been quantified and such payment has been made and following such payment the undertaker shall not be required to implement any further compensation measures for kittiwake pursuant to this Part 1 of Schedule 17.

10. In the event that a Final KIMP is submitted detailing delivery of an onshore compensation measure(s), and monitoring reports submitted to the Secretary of State in accordance with the approved Final KIMP include findings that the compensation measures delivered have been ineffective then proposals for any alternative and/or adaptive management measures shall be provided as agreed by the OKEG and notified to the Secretary of State as part of the monitoring reports.

11. The Final KIMP approved under this Part 1 of Schedule 17 includes any amendments that may subsequently be approved in writing by the Secretary of State. Any amendments to or variations of the approved Final KIMP must be in accordance with the principles set out in the kittiwake implementation and monitoring plan and may only be approved where it has been demonstrated to the satisfaction of the Secretary

of State that it is unlikely to give rise to any new or materially different environmental effects from those considered in the kittiwake implementation and monitoring plan.

PART 2

GUILLEMOT AND RAZORBILL COMPENSATION

1. In this Part 2 of Schedule 17—

“the Farne Islands SPA” means the site designated as the Farne Islands Special Protection Area;

“the FFC SPA” means the site designated as the Flamborough and Filey Coast Special Protection Area;

“Guillemot and razorbill implementation and monitoring plan” means the document certified as the guillemot and razorbill implementation and monitoring plan by the Secretary of State for the purpose of this Order under article 51 (certification of plans and documents etc);

“Final GRIMP” means the final guillemot and razorbill implementation and monitoring plan for the delivery of measures to compensate for the predicted loss of adult guillemot and razorbill from the FFC SPA or Farne Island SPA as a result of the authorised development which shall accord with the principles identified in the guillemot and razorbill implementation and monitoring plan;

“the Marine Recovery Fund” means the fund to be established and operated by Defra pursuant to the Offshore Wind Environmental Improvement Package of the British Energy Security Strategy (April 2022) for the implementation of strategic compensation or any equivalent fund established by a Government body for that purpose;

“Marine Recovery Fund Payment” means a contribution to the Marine Recovery Fund to compensate for the predicted loss of adult guillemots and razorbills from the FFC SPA and Farne Islands SPA as a result of the authorised development the sum of which shall be calculated in accordance with any guidance issued by Defra or otherwise to be agreed with the Secretary of State;

“OGREG” means an offshore guillemot and razorbill engagement group which has been or shall be established to assist, through consultation, the undertaker and the developer of any other project with whom the undertaker is to collaborate in the delivery of the onshore compensation measures for guillemot and razorbill; and

“the onshore guillemot and razorbill compensation measure” means measures to reduce disturbance for colonies of guillemot and razorbill identified as being in decline onshore, or improve breeding success through reducing avian predation.

2. No offshore works are to commence until the undertaker has confirmed in writing to the Secretary of State whether it will—

- (a) make a Marine Recovery Fund Payment; or
- (b) submit a Final GRIMP to the Secretary of State for approval.

3. Where the undertaker elects to submit a Final GRIMP no offshore works are to commence until a plan for the work of the OGREG has been submitted to and approved by the Secretary of State, such plan to include—

- (a) the identity of, or the arrangements for establishment of, the OGREG;
- (b) its terms of reference;
- (c) its membership will shall (as a minimum) include the local planning authority for the area in which the onshore guillemot and razorbill compensation measure is to be provided, and SNCB as core members, and the RSPB as advisory member;
- (d) details of the proposed schedule of meetings, reporting and review periods; and
- (e) the dispute resolution mechanism and confidentiality provisions.

4. Following consultation with OGREG, the Final GRIMP must be submitted to and approved by the Secretary of State—

5. The Final GRIMP (if required) must be based on the strategy for guillemot and razorbill compensation set out in the guillemot and razorbill implementation and monitoring plan and include—

- (a) the location where the compensation measures will be delivered and the suitability of that location (including why the location is appropriate ecologically and likely to support successful compensation), and confirmation that the necessary landowner agreement(s) are in place;
- (b) an implementation timetable for delivery including any arrangements made with a third party for implementation of the measures;
- (c) details of any contribution to be made to a third party to ongoing maintenance of the compensation measures delivered in collaboration with a third party;
- (d) details for the ongoing monitoring and reporting of the effectiveness of the compensation measures identified in the Final GRIMP including—
 - (i) survey methods;
 - (ii) survey programmes;
 - (iii) success criteria; and
 - (iv) timescales for the monitoring reports to be delivered;
- (e) details of any adaptive management measures, with details of the factors used to trigger any alternative and/or adaptive management measures; and
- (f) confirmation as to how it has had regard to output of consultation with OGREG.

The undertaker must implement the measures set out in the Final GRIMP approved by the Secretary of State, unless otherwise agreed by the Secretary of State following consultation with the relevant statutory nature conservation body, and the local planning authority for the area in which the onshore guillemot and razorbill compensation measure is to be provided. No operation of any wind turbine generator forming part of the authorised development may begin until the Final GRIMP has been implemented and this has been confirmed to the Secretary of State.

7. Where the undertaker has confirmed that it shall make a payment to the Marine Recovery Fund there shall be no operation of a wind turbine generator unless and until the Marine Recovery Fund Payment has been quantified and such payment has been made and following such payment the undertaker shall not be required to implement any further compensation measures for guillemot and razorbill pursuant to this Part 2 of Schedule 17.

8. In the event that a Final GRIMP is submitted detailing delivery of an onshore compensation measure(s), and monitoring reports submitted to the Secretary of State in accordance with the approved Final GRIMP include findings that the compensation measures delivered have been ineffective then proposals for any alternative and/or adaptive management measures shall be provided as agreed by the OGREG and notified to the Secretary of State as part of the monitoring reports.

9. The Final GRIMP approved under this Part 2 of Schedule 17 includes any amendments that may subsequently be approved in writing by the Secretary of State. Any amendments to or variations of the approved Final GRIMP must be in accordance with the principles set out in the outline guillemot and razorbill implementation and monitoring plan and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any new or materially different environmental effects from those considered in the guillemot and razorbill implementation and monitoring plan.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of an offshore wind farm in the English Channel approximately 13 kilometres south of the West Sussex Coast together with associated development. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights.

This Order also grants deemed marine licences under Part 4 of the Marine and Coastal Access Act 2009 in connection with the wind farm. The marine licences impose conditions in connection with the deposits and works for which they grant consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 51 (certification of plans and documents etc) together with a copy of any guarantee or alternative form of security approved by the Secretary of State pursuant to article 53, may be inspected free of charge at the offices of Rampion Extension Development Limited at Windmill Hill Business Park, Whitehall Way, Swindon, Wiltshire, England, SN5 6PB.