



3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer 0303 444 5000
Services: RampionWindFarm@infrastructure.gsi.gov.uk
e-mail:

To all interested parties

Your Ref:

Our Ref: EN010032

Date: 13 January 2014

Dear Sir/Madam

**Planning Act 2008 (as amended) and The Infrastructure Planning
(Examination Procedure) Rules 2010 (as amended) – Rule 17 and Rule 8(3)**

**Application by E.ON Climate and Renewables UK Rampion Offshore Wind Ltd
for an Order Granting Development Consent for the Rampion Offshore Wind
Farm**

**Notification of deadline for comments on responses received for Deadline XII
of the examination timetable and request for further information**

The Examining Authority (ExA) has reviewed responses submitted for Deadline XII of the examination on 10 January 2014. It is apparent that some information contained within these submissions has not previously been raised through the examination. In light of this, the ExA has concluded that it cannot now complete the examination satisfactorily without further information. Accordingly this letter requests that interested parties comment upon:

- the amendments proposed to the draft Development Consent Order (DCO) submitted by all interested parties at Deadline XII
- the position reached in relation to specified Habitats Regulations Assessment and Environmental Impact Assessment
- other identified matters

Draft Development Consent Order

The ExA is only providing an opportunity for comments to be submitted regarding changes proposed to the DCO in responses submitted for Deadline XII. Therefore the ExA requests the applicant to provide a further revised version of the DCO (in Microsoft Word compatible format) incorporating any further changes it proposes to make to the DCO as a result of the information contained in the responses submitted for Deadline XII and any ExA questions below.

This should be provided, as previously requested, in the Statutory Instrument format. The Secretary of State (SoS) will expect to see the full history of changes made to the

submitted draft DCO document over the course of the examination when he considers the ExA's report and recommendation. As such, the applicant must provide a version of the draft DCO which shows all tracked changes to date, in a Microsoft Word compatible file.

Onshore Decommissioning

In its response to the ExA draft DCO the applicant has objected to the proposed wording of Requirement 40. The applicant is requested to provide alternative wording for this provision. This is to cater for the possibility that the SoS may decide that a provision is required to secure decommissioning of the onshore substation proposed to be consented under the provisions of this Order at the end of the life of the Rampion OWF unless otherwise agreed by the local planning authority.

While the Galloper OWF position may have involved particular circumstances it is the case that onshore decommissioning provisions have been or are currently being applied in other DCO applications. To provide some assistance to the applicant, attention is drawn to the provisions now included in granted or proposed Orders for the Galloper, Walney and East Anglia One Offshore Wind Farms.

Parent Company Guarantee (PCG)

The ExA requests answers to the following questions in relation to the applicant's response to 3d on the action list from the Issue Specific Hearing held on the 5 December 2013:

- The ExA notes that the applicant states that the PCG is governed by the principles of general contract law. The ExA has some concerns that the PCG is not a valid contract but is an interparty deed to which the Contracts (Rights of Third Parties) Act 1999 does not normally apply. Can the applicant explain in relation to the relevant legal principles how it considers the PCG satisfies the requirements of a contract by reference to the key elements of a contract, ie. offer, acceptance, consideration, intention to create legal relations, certainty of terms?
- In the alternative could the applicant also confirm whether it considers the PCG to be an interparty deed or in substance effectively a deed poll by E.ON in favour of the beneficiaries?
- Can the applicant also explain by reference to relevant legal principles how this would be enforced by the beneficiaries? Does the applicant consider that the PCG would need to be re-drafted so as to allow it to be legally enforceable as a deed poll and if so how? Has the applicant given any consideration to whether trust law principles could also be relied upon, for example by the contracting party declaring that it holds the benefit of a contractual promise on trust for third party beneficiaries?
- If the applicant concludes that the PCG is unenforceable can it consider an amendment to the DCO to include an article preventing the exercise of any powers of compulsory acquisition until the applicant has provided, to the satisfaction of the relevant planning authority, effective and enforceable security including but not limited to a PCG, Bond, Bank Guarantee or policy of insurance which shall guarantee a sum of no less than £10,000,000 and provide a s.106 agreement to the same effect?

GlaxoSmithKline (GSK)

- Can the applicant and GSK now confirm that a pipeline crossing agreement has been signed and completed? Does either party wish to provide any further comment or information regarding this agreement?
- Can the applicant confirm that it accepts the amendments to its protective provisions proposed on behalf of GSK?
- Can GSK explain its justification for a protective requirement for an insurance policy cover of £15,000,000 per event to be provided in relation to safeguarding its own interests by comparison with the proposed 'parent company funding guarantee' of £10,000,000 apparently intended to cover total financial liability arising from all justified compensation or injurious affection claims referred to in the applicant's proposed funding agreement?

Article 7 (Transfer of Benefit);

Article 2 & 40, Requirement 8 and Schedule 13 condition 8(a)(i) (Design Principles);

Article 2 & 40 and Requirement 8 (Outline Employment and Training Plan); Requirement 19:

- The applicant has indicated its disagreement with the draft wording relating to these provisions in the ExA draft DCO. The applicant's disagreement with the substance of these provisions is noted. However it remains possible that the SoS may decide to include provisions of this type. Does the applicant wish to provide suggested revised wording for these provisions to cater for the possibility that the SoS may so decide?
- Do Natural England (NE), South Downs National Park Authority (SDNPA), West Sussex County Council (WSCC) or any other interested parties wish to comment regarding the various positions put forward by the applicant in its schedule of comments regarding the ExA draft DCO?

Highways Agency

- The applicant is invited to consider each of the comments raised by the HA in its response to Deadline XII and to submit revisions to the draft DCO as necessary.
- Should the applicant not agree with any comments made by the HA in their response to Deadline XII to explain in detail the reasons for its position.
- The HA is invited to explain in further detail why it considers Article 15 of the draft DCO should be removed. The ExA is aware that this provision is contained in several DCOs that have been made and approved by the SoS. The HA is also asked to explain how they consider the applicant would carry out the street works necessary to facilitate the development if this provision and the reference to Article 15 in Schedule 2 is deleted.
- The HA is invited to explain in further detail why it considers Article 16 of the draft DCO should be removed. This provision is permitted by s.120 'What may be included in order granting development consent'.
- The HA, WSCC and the applicant are invited to comment on the following redrafted wording to replace existing Article 18(b)

Article 18

(b) Subject to 18(c), with the approval of West Sussex County Council, 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

(c) In relation to trunk roads the approval of the Highways Agency is required, in consultation with West Sussex County Council, to 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.

English Heritage

- Would the applicant provide to English Heritage (EH) the diver mitigation plan referred to in the EH response to Deadline XII. Alternatively can the applicant provide information regarding the proposed timing and methodology for agreement of the diver mitigation plan with EH?
- Would the applicant revise the wording of Condition 8(h) in both proposed Deemed Marine Licences to address point 1 made by EH in its letter dated 7 January 2014 submitted in response to Deadline XII?

Habitats Assessment Regulations Matters

Parties are asked to respond to questions below with regard to the legal context that the UK is bound by the terms of the Habitats Directive, the Birds Directive, and the Ramsar Convention. The protection given by the Habitats Directive is transposed into UK legislation through the 2010 Habitats Regulations (as amended). Special Areas of Conservation (SACs), candidate Special Areas of Conservation (cSACs) and Special Protection Areas (SPAs) are protected under the Habitats Regulations. As a matter of policy the Government also applies the procedures described below to potential SPAs (pSPAs), Ramsar sites, and (in England) proposed Ramsar sites and sites identified, or required, as compensatory measures for adverse effects on any of the above sites.

The Habitats Directive requires appropriate assessment where a plan or project is likely to have a significant effect upon a European site, either individually or in combination with other plans or projects. Where appropriate assessment has been carried out and the development will adversely affect the integrity of a European site(s), despite proposed avoidance or mitigation measures, or if uncertainty remains, consent will only be granted if there are no alternative solutions, there are Imperative Reasons of Overriding Public Interest (IROPI) for the development and compensatory measures have been secured.

Alderney West Coast and the Burhou Island Ramsar Site

- Does the applicant wish to provide anything further in response to Natural England's response to Deadline XII, item 2, '*HRA: Alderney and Ramsar Gannet*'?

Flamborough Head and Bempton Cliffs SPA

- The applicant states in paragraph 9 of Appendix 13 of its response to Deadline XII that it does not believe that a strategic approach to inform the decision making on the Rampion consent, taking into account all schemes currently in the planning system, is required. Can the applicant provide clarification,

including references, regarding case law and/or guidance that supports this statement and on whether all windfarms should be taken into account?

- The applicant refers in paragraph 19 of Appendix 13 of its response to Deadline XII to '*available industry guidance*'. Can the applicant confirm the source guidance documents to which this refers and provide relevant excerpts from these sources?
- In light of absence of agreement on likely significant in-combination assessments for gannet and kittiwake features can both applicant and NE consider any recent relevant similar projects? Having regard to these projects, in the event that the SoS finds mitigation necessary to exclude a likely significant effect or at the appropriate assessment stage to rule out an adverse effect on the integrity of the site then:
 - what mechanisms for mitigation could be secured relevant to those bird species?
 - what would be the pro-rata reduction in mortality resulting from the proposed mitigation need to be in order to be certain of no likely significant effect?

The applicant and NE are requested to provide clear reasoning for responses to these questions supported by reference to appropriate evidence.

- The applicant is requested to submit revisions to the proposed DCO (including the DMLs) in the light of the possibility that the SoS might consider an appropriate assessment to be necessary and finds a likely significant effect cannot be excluded. The ExA requests that any proposed revisions should be discussed with NE.
- In that context the applicant may wish to consider whether measures such as swept area reduction and/or a reduction in the maximum number of turbines provided for within the authorised development pro-rata to the ornithological collision impact of the project as set out in the in-combination assessment submitted.
- The applicant may also wish to consider other ways of offering relevant mitigation to address the issue of ornithological impacts.
- If the applicant considers that mitigation is not possible or does not wish to pursue that approach, does it wish to provide any further information should the SoS deem it necessary to consider alternative solutions, imperative reasons of overriding public importance (IROPI) or compensatory measures? If the applicant wishes to argue that a turbine reduction approach, or other mitigation, is inappropriate and that alternative solutions, IROPI or compensatory measures should be considered then it should put forward clear justification and describe the alternatives and/or compensatory measures that it puts forward in support of its case.
- The applicant, NE, Royal Society for the Protection of Birds (RSPB) and Sussex Ornithological Society (SOS) are requested to comment upon whether the turbine exclusion zone now proposed in the draft Order, which would have the effect of reducing the proposed spatial extent of those elements of the Rampion OWF, would be likely to offer any mitigation effect upon ornithological mortality and if so whether that is likely to be proportionate to the reduction in extent and quantify the possible mitigation. Alternatively if the reduction in spatial extent is considered unlikely to reduce mortality can the relevant parties explain why not?

Baie de Seine SPA

- Does the applicant wish to provide anything further in response to NE's response to Deadline XII, item 5, '*HRA: Baie de Seine SPA: lesser black-backed gull*'

Environmental Impact Assessment

- Can the applicant, NE and RSPB comment about whether the mitigation proposals sought in response to HRA issues above would also benefit these species by reducing mortality (namely North Sea gannet population, North Sea kittiwake population, North Sea lesser black-backed gull population and North Sea great black-backed gull population)?
- Does the applicant wish to provide any comment in response to Natural England's response to Deadline XII, item 9, '*EIA: North Sea great black-backed gull population*' which finds a significant adverse effect cannot be ruled out?

Other Identified Matters

S106 Agreement with West Sussex County Council:

- Can the applicant explain why a third party that has not been actively engaged in the examination has been bound into the s106 agreement with West Sussex County Council?
- Can the applicant provide four hard copies of the s106 agreement with the site area outlined in red (the red line is included in the electronic version but not in the submitted hard copy)?

Planning Performance Agreement with West Sussex County Council:

- Can the applicant and WSCC now confirm that a Planning Performance Agreement has been signed and completed ?

Unilateral Undertaking in relation to South Downs National Park Authority and Natural England Comments:

- Can the applicant explain why a third party that has not been actively engaged in the examination has been bound into the unilateral undertaking in relation to the South Downs National Park Authority (SDNPA)?
- The applicant has disagreed with the SDNPA over the nature and level of financial provision that should be contributed for aspects of mitigation, offset and enhancement and monitoring. The ExA may need to come to a view regarding the adequacy and appropriateness of the respective cases and documentation put forward by the parties in its recommendation to the SoS. Natural England has previously made broad submissions in relation to the matters covered by these documents. Having regard to its role as advisor to Government regarding national parks, landscape and conservation matters, can NE now provide detailed comments regarding the terms and content of these documents, including its overall assessment of whether and how the documents meet the relevant policy tests and comments regarding the sufficiency of the financial contributions proposed in the applicant's Unilateral Undertaking and SDNPA's submitted draft s106 agreement?
- Can SDNPA provide an indication of whether or not the authority is likely to enter into the confirmatory agreement submitted by the applicant for Deadline XII?

The Deadline for responses to questions and submission of comments in response to the above is 11:59PM Saturday 18 January 2014.

Relevant documents can be found at the following link:

<http://infrastructure.planningportal.gov.uk/projects/south-east/rampion-offshore-wind-farm/?ipcsection=overview>

Important to Note:

This is the final Deadline for submissions in the timetable for examination of this application. Comments should only be submitted in relation to the questions set out in this letter. This is **not** an opportunity for further representations to be submitted to the ExA in writing.

All interested parties should therefore ensure that their responses are received by the Deadline notified above.

The examination **must** be closed by midnight on 18 January 2014 at the latest. Submissions received after the close of the examination **cannot** be taken into account by the ExA. The ExA will notify interested parties of completion of it's examination of the application following closure of the examination.

Yours faithfully

Lorna Walker

**Lorna Walker
Lead Member of the Panel of Examining Inspectors**

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

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