



The Planning Inspectorate

**Issue Specific hearing
Development Consent order (DCO) and Deemed marine
Licenses DMLS)
The Brighton Centre Syndicate Wing
6 – 7 November 2013**

Note: Other items may be added to the agenda following the outcomes of the Issue Specific Hearings to be held 30 October – 1 November 2013.

Agenda

1. Chair's Introduction

2. Articles

Article 2 – Interpretation

Confirmation that MMO is content with the definition of 'maintain'.

Whether progress has been made concerning a possible condition for an Operational and Maintenance Plan.

Whether the definition of 'relevant planning authority' has been agreed. Clarification to which it applies as other articles such as Article 6 rely upon it.

Whether a definition for 'decommission' should be included

Whether the definitions of 'street authority' and 'relevant planning authority' under Article 2 are clear

Whether there needs to be inclusion of the term 'access land' under Article 2.

Whether there are any other definitions in this Article where agreement has not been reached.

Article 6 - Requirements, Appeals, etc.

Whether progress has been made on this definition including clarification in relation to the definition of 'relevant planning authority' in Article 2

Article 7 - Benefit of the Order

Whether other parties share MMO's concerns regarding the wording of Article 7 and potential related implications for enforceability and enforcement or wish to raise any other points regarding the wording of Article 7

Whether applicant can explain the commercial reasons for its adoption of the version 4 wording of Article 7

Whether the wording of Article 7 relating to benefit transfer could not adopt one of the provisions used in the consented DCOs for Kentish Flats, Triton Knoll and Galloper Offshore Wind Farms which also provided for benefit transfer but relied on wording that did not raise questions of enforcement and enforceability

Article 10 - Abatement of works abandoned or decayed

Whether agreement has been reached between applicant and MMO regarding the wording of this article

Whether there is a need for the inclusion of a requirement or requirements in relation to the decommissioning of onshore infrastructure and abandonment or decay of onshore infrastructure and, if so, what form that/those provision(s) should take

Article 13 – Crown Rights

Whether there is evidence that the Crown Estate and relevant Government departments are content with the terms of the DCO proposed in version 4.

Whether the applicant can clarify what progress has been made in relation to Crown consent for compulsory acquisition of interests in Crown Land held otherwise than by or on behalf of the Crown if these interests have not yet been received.

Article 14 - Defence to proceedings in respect to statutory nuisance

Whether relevant local authorities or any other parties wish to raise queries or concerns in relation to the content and/or

wording (including consideration of evidence or justification for any concerns expressed).

Article 15 – Street Works

Whether there is a need to include a reference to the street authority in this article.

Article 17 – Public rights of way

Whether paragraph (2) is clear and precise as to which is the relevant highway authority to be referenced in this provision.

Whether there should be reference to consultation with SDNPA as per Requirement 22.

Whether Schedule 4 - Public rights of way to be temporarily stopped up – is correct.

Article 18 - Access to works

Whether sub paragraph (2) should refer to the 'relevant highway authority' and not West Sussex County Council.

Article 19 – Agreements with street authorities

Whether the definition of 'street authority' in Article 2 is clear

Whether the definition of 'relevant planning authority' in Article 2 is clear.

Article 21 - Authority to survey and investigate the land

Whether there is agreement on the addition of (5) by the owners and occupiers of the land.

Articles 23-35 and 41 – Compulsory Acquisition

In relation to compulsory acquisition provisions included in Articles 23-35 of the DCO (together with related Schedules) and Article 41 (Protective Provisions) whether any Affected Parties who have not yet reached agreement over Protective Provisions and/or voluntary acquisition with applicant wish to:

- provide an update regarding the progress of negotiations

- raise queries and/or concerns regarding provisions dealing with compulsory acquisition of land or of rights in, on, over or under land.

Whether applicant is able to provide an update regarding negotiations regarding agreement of protective provisions together with any implications for withdrawal of objections that may in turn enable withdrawal of s127 applications.

Whether any uncertainties remain outstanding regarding the Book of Reference (BoR) entries and whether applicant can ensure that the updated BoR can be submitted by Deadline VIII (i.e. prior to the CA hearing on 27 November).

Article 37 – Felling or lopping of trees and removal of hedgerows and Article 38 – Trees subject to tree preservation orders

In response to 2Q58, NE and WSCC have both expressed concern with the drafting of Articles 37 and 38.

Whether NE, WSCC and applicant can agree revised drafting of Article 37 and Article 38 that is acceptable to all parties. If not, whether these parties can provide draft alternative draft wording of Articles 37 and 38 to the ExA for its consideration.

Article 39 - Procedure in relation to further approvals, etc. and Article 40 – Certification of plans etc.

Whether the information now available permits the ExA to make assessments of any net adverse impacts of the proposed project after mitigation to balance against any identified benefits.

Refer to Statement in Appendix A in relation to scope, content, adequacy and timing of information related to further approvals.

Article 42 – Arbitration

The location of the proposed Rampion Offshore Wind Farm Project close to a highly populated coastline and potentially visible from higher ground including land within the South Downs National Park might raise a range of third party and public interest in any difference or dispute regarding the DCO and Licences. Notwithstanding its use in a number of previous approved DCOs, in the circumstances of the proposed Rampion Offshore Wind Farm Project whether the wording of the Article

provides sufficient clarity and confidence of a transparent and open determination process carried out with professional independence and integrity.

Whether the arbitration process would provide potential for third party engagement and involvement where third parties wished engagement.

Whether the terms of the Article are clear regarding the definition of 'differences' (and therefore to what matters the Article would apply), the qualifications and capabilities of any arbitrator to be appointed, the legal, procedural or administrative framework within which that person would operate and uncertainty regarding the identity and role of 'the decision-maker'

3. Requirements

Requirement 5

Whether the area defined by the grid co-ordinates where export cables can be located is agreed with Shoreham Port Authority and relevant fishing organisations.

Requirements 17 - 23

Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII – 'Discharge of Requirements in the draft DCO (as at 15 October 2013).

Requirement 25

Whether WSCC is content with the amended wording of this requirement.

Requirement 28

Whether WSCC and SDNPA have now reached agreement as to their proposals regarding the identity of the appropriate discharging authority for this requirement, as set out in Appendix 8 of applicant's submission to Deadline VII.

Requirement 29

Whether WSCC, NE and EA are content with the redrafted wording of this requirement.

Whether WSCC and SDNPA have now reached agreement regarding the identity of the appropriate discharging authority for this requirement, as set out in Appendix 8 of the applicant's submission to Deadline VII.

Requirement 30

Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII.

Requirement 31 and 31A

Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII.

Does NE wish to comment?

Requirement 32

Have WSCC and SDNPA now reached agreement regarding the identity of the appropriate discharging authority for this requirement, as set out in Appendix 8 of the applicant's submission to Deadline VII.

Requirement 33

Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII.

Requirement 34

Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII.

Requirement 35 and 35A

Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII.

Requirement 36

Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII.

Requirements 38 and 38A

Whether WSCC, NE and SDNPA are content with the redrafted wording to this requirement.

Whether there should be a further requirement to cover offshore EPS such as the harbour porpoise

Requirement 39

Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII.

Whether Article 2 needs to include a definition of the phrase 'completion of commissioning' and whether this requirement should provide clarity regarding when and how this will be confirmed.

Requirement 39A

Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII.

Requirement 40

Whether it is appropriate that Mid Sussex District Council is the discharging authority, given that it has confirmed it has given approval for West Sussex County Council to be the Relevant Authority for requirements (as per their email dated 24/7/13).

Requirement 41

Whether SDNPA is content with the redrafted wording of this requirement.

Requirement 43

Whether this requirement is appropriate in the circumstances of the proposed project

Or, alternatively, whether it could be redrafted to enhance clarity.

4. Schedules

Schedule 1 - Authorised Project, Part 1 Authorised Development

Whether there are any outstanding concerns regarding the coordinates for the Order limits seaward of MHWS quoted in Section 2 of this schedule – i.e. the spatial extent of the marine element of the project.

Schedule 2 - Streets Subject to Street Works), Schedule 3- Footpath to be permanently stopped up, Schedule 4 - Public rights of way to be temporarily stopped up, Schedule 5 - Access to Works and Schedule 6 - Temporary suspension of public access to Access Land.

Whether any party wishes to raise points in connection with the version 4 wording of any of these schedules.

Schedule 7 - Land in which only new rights etc., may be acquired, Schedule 8 - Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights and Restrictive Covenants and Schedule 9 -Land of which Temporary Possession may be taken.

Whether any party wishes to raise any points in connection with the version 4 wording of these schedules.

Schedule 10 - Important Hedgerows and Schedule 11 - Trees subject to Tree Preservation Orders.

Whether any party wishes to raise any points in connection with version 4 wording of these schedules.

Schedule 12 - Protective Provisions

As no protective provisions are as yet included in Version 4 of the draft DCO as submitted by the applicant whether the applicant can give an update and when they will be provided..

Whether any party wishes to raise any points in connection with this schedule

Schedule 13 - Deemed licence under Marine and Coastal Access Act 2009 – array, Part 1 Licensed Marine Activities

Section 1

Whether the relationship between works falling under the definition of 'maintain' and the works falling under the definition of 'decommission' is sufficiently clear

Section 3

Whether the spatial extent of the array as reflected in the grid coordinates is acceptable

Whether any changes should be made to any of the physical parameters of the array marine activities and development scheme from those currently proposed

Schedule 13 - Deemed licence under Marine and Coastal Access Act 2009 – array, Part 2 Conditions

Condition 5

Whether MMO, MCA and Trinity House are content with the amendments

Condition 5B

Whether MCA and Trinity House are content with the amendment

Conditions 6(2), 6(11) and 6(12)

Whether MMO is content with the amendments and additions

Condition 8

Whether progress has been achieved in discussions between MMO and applicant regarding the revised wording of this condition.

Condition 12

Whether MMO is content with the amendments and additions

Condition 13

Whether MMO is content with the amendments

Condition 14

Whether MMO is content with the amendments, deletions and additions

Schedule 14 - Deemed licence under Marine and Coastal Access Act 2009 – export cable

Whether any party wishes to comment upon any of the conditions set out in version 4 of the draft Export Cable(s) Licence.

As the majority of these conditions are the same as in Schedule 13, the ExA will consider only where there are differences.

Whether 14(2)(a) should be re-instated and reworded as requested by MMO.

5. Explanatory Memorandum

Whether any party wishes to comment upon the Exploratory Memorandum and whether it requires updating.

6. Other Matters

Climate change adaptation

Whether the project's provisions for climate change adaptation is adequate when considered against the relevant policies set out in the Government's National Policy Statements EN-1, EN-3 and EN-5.

Whether these provisions for climate change adaptation are reflected appropriately not only within the project proposals but in the wording of the DCO and Licences.

Alternatives

Whether the assessments of alternatives put forward by the applicant in relation to:

- i) the transmission arrangements
- ii) the siting of the proposed onshore sub-station
- iii) the array layout

have considered the principal alternatives that may be practicable, feasible and deliverable.

Whether the alternatives to the applicant's proposed transmission arrangement put forward by the Brighton and Hove Civic Society and other parties meet the principles set out at paragraph 4.4.3 of the relevant overarching Government policy statement for energy – National Policy Statement EN-1 (July 2011).

Whether the alternative site put forward by Parties who are local residents living near the applicant's proposed onshore sub-station site and by Twineham Parish Council meet the principles set out at paragraph 4.4.3 of the relevant overarching

Government policy statement for energy – National Policy Statement EN-1 (July 2011).

Whether any of the alternative illustrative array layouts assessed by the applicant in the ES address any or all of the potential constraints and impacts identified during the examination to date.

7. Any Other Business

8. Close of Hearing

Attendees

E.ON Climate and Renewables (E.ON)
Marine Management Organisation (MMO)
Natural England (NE)
West Sussex County Council (WSCC)
South Downs National Park Authority (SDNPA)
Other relevant Planning Authorities
Marine and Coastal Agency (MCA)
Trinity House
GlaxoSmithKline (GSK)
Any Affected Party where a formal agreement has not been signed

Attendees need to ensure they bring copies of the following Development Consent Order documents:

- i) Comparison between Version 1 (March 2013) and Version 4 (October ¹2013) of the Development Consent Order.
- ii) Schedule of Changes to the draft DCO Version 3 October 2013

¹ Incorrectly entitled “Comparison between Version 1 (March 2013) and Version 4 (March 2013) of the development consent order” as submitted by the applicant

Appendix A

Statement in relation to Articles 39 and 40 of the draft DCO.

During the course of the examination of the Rampion Offshore Wind Farm Project development consent order application to date reference has been made by the applicant and various other parties to precedents that may (or may not) have been set by other DCO applications consented by relevant Secretaries of State. The wording of DCOs granted by previous offshore wind farm development consents certainly provides a helpful reference point. It is, however, important to note that each application must be considered in the light of the provisions of s104 of the Planning Act 2008 (as amended), which necessitate that the particular merits, demerits and other contextual circumstances of each proposal must be taken into account. In the case of the Rampion offshore wind farm there are some significant differences between the implications attending the distinctive location and setting of the proposed project and those attending the locations and settings of previous applications.

The proposed project would be located relatively close to a shoreline that is heavily populated in substantial urbanised sections, that includes some important holiday resorts and that includes a section of the South Downs National Park and heritage coast. The Applicant's Environmental Statement indicates that the proposed turbine array and offshore substations would be visible from parts of the National Park, from most of the coastline (nearly 50 miles) between Selsey Bill and Beachy Head and from a number of important residential and recreational and tourist facilities. The proposed onshore corridor for construction of the underground transmission cables would be cut through an urban park and would subsequently extend across the South Downs National Park, crossing through Tottington Mount, a designated Ancient Monument.

The Panel notes that these are not circumstances applicable to any of the other offshore wind farms that have been granted development consent. The examination has some time yet to run and there are opportunities for parties' contributions to be considered. It must therefore be emphasised that the Panel has

not yet come to its conclusions nor to a final view regarding any aspect of the application. Nevertheless it will not come as a surprise to any party that the Examining Authority's report and recommendation is likely to take account of the aforementioned points.

During this examination concerns have been raised by a number of parties regarding the adequacy of information available to enable the Examining authority to undertake its assessment of the project proposed in the light of the relevant legal tests. These tests are set out in *inter alia* in the Planning Act 2008 as amended as well as in other relevant legislation. For example, s104(7) of the PA2008 necessitates an assessment of any adverse impacts of the proposed development and their balancing against any benefits that may be attributed to the proposal.

In addition, policies set out in National Policy Statements EN-1, EN-3 and EN-5 include specific requirements for assessment of applications which the ExA must address in its report to the Secretary of State in order for the Secretary of State to meet his statutory obligations under s104 of the Act.

In relation to the 'duty to have regard to the purposes of the National Park' as required under s11A(2) of the National Parks and Access to the Countryside Act 1949. The statutory purposes of the South Downs National Park are specified in the Environment Act 1995 and are:

1. To conserve and enhance the natural beauty, wildlife and cultural heritage of the area.
2. To promote opportunities for the understanding and enjoyment of the special qualities of the Park by the public.

Accordingly the ExA will need to report to the Secretary of State regarding the implications of the proposal in relation to these National Park purposes and in due course the MMO and other discharging bodies including the National Park Authority itself will also need to consider those purposes in taking decisions regarding aspects reserved for subsequent approval.

One of the key concerns of the Examining Authority is how, based on the information submitted that is captured by the DCO and DML provisions, assessment can be made of the net impacts of the project after mitigation. It has been suggested in relation to some aspects of the application that an assessment of certain adverse impact mitigation cannot

be made due to inadequate information or absence of information. If the ExA considered the aspects concerned to be relevant and important to its recommendation and agreed with the proposition of inadequacy put forward, the Panel would be left with no alternative other than to make its assessment and apply relevant legal and policy tests based on the worst case defined by the 'Rochdale Envelope' put forward in the application. The Panel's assessment could not include an allowance for mitigation if there was no information or inadequate information regarding that mitigation.

The ExA has considered very carefully the information contained in the application, as supplemented by the applicant during these proceedings. The Environmental Statement suggests a wide range of mitigation measures that may be relevant to stem or alleviate particular adverse impacts. However, the ExA is unsure whether all these mitigation measures are provided for within the proposed DCO requirements and Licence conditions.

In response to a request by the ExA the Applicant has submitted Appendix 11 for Deadline II. This appendix sets out a table of mitigation measures suggested in the ES and indicates where those measures listed can be found in the proposed DCO and Licences. It is noted that this appendix now appears to be slightly out of date as it does not capture additional mitigation measures offered by the applicant during the examination. There is also a question over whether it captures all the relevant and important mitigation measures suggested in the ES.

In addition, as part of its response to Deadline VII the applicant submitted Appendix 9, a table listing document submissions and discharging bodies for the proposed DCO requirements and DML conditions. The table indicates, amongst other things, the objectives of the relevant requirements and conditions relating to documents and information reserved for subsequent approval by discharging bodies.

We are now reaching an advanced stage of the examination and it is important to bring to a head as soon as possible the resolution of any concerns over information that may still remain. Therefore the discharging bodies named in Appendix 11 who are parties to the examination are invited to consider:

- a) the mitigation information in the Environmental Statement and
- b) the contents of Appendix 11 (submitted for Deadline II) and Appendix 9 (submitted for Deadline VII).

The ExA invites comments at the hearing by these named discharging bodies and applicant as to four points:

1. any gaps that they may have identified in the mitigation provided for in Appendix 11. (And in considering this point they may wish to compare the content of Appendix 11 to the mitigation suggested in the ES or otherwise raised during the examination to date);
2. any concerns regarding the scope, clarity and content of the objectives set out in Appendix 9;
3. whether the standards and references referred to in Appendix 9 adequately capture the range of reference points (e.g. statutory requirements, standards, policies, guidelines etc) that the relevant discharging body would consider when taking its decision regarding the plan, matter or information reserved for subsequent approval. Would the inclusion of a defined desired outcome in relation to each DCO requirement or DML condition be helpful in clarifying the likely net impact in order to facilitate the ExA's assessment?
4. suggestions that would provide greater clarity and confidence that the relevant aspect of the project or impact mitigation would be delivered at the appropriate stage.

In relation to the latter point the ExA invites comments from the parties regarding whether any provisions of the DCO and DMLs should be linked expressly to the content of Appendix 11 and/or Appendix 9. Would such linkage help to provide greater clarity and confidence regarding both the likely net impacts after mitigation and the way in which aspects reserved for subsequent approval will be addressed by both the applicant and by the discharging body concerned when the relevant submissions are made?

**Rampion Offshore Wind Farm Examining Authority
29 October 2013**