

4 November 2013

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Our ref:  
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Your ref:

Dear Kay

**E.ON Climate & Renewables UK Rampion Offshore Wind Limited**  
**Proposed Rampion Offshore Wind Farm**  
**Application Ref: EN0100032**

In advance of the Development Consent Order Hearings (the **Hearings**) due to take place on Wednesday 6 and Thursday 7 November 2013, the Applicant requests that the attached document, being comments on the Agenda, is provided to the Examining Authority to assist discussions at the Hearings.

Yours sincerely

  
**John Houghton**  
Senior Counsel  
for and on behalf of Bond Dickinson LLP

**Enclosures**

1 Applicant's response to issues raised on the Agenda



## **Rampion Offshore Wind Farm**



### **Applicant comments in advance of the Issue Specific Hearing on the Development Consent Order and Deemed Marine Licences (6 – 7 November 2013)**

**E.ON Climate & Renewables UK Rampion Offshore Wind Limited**

Agenda Item	Applicant Response
<i>Article 2 – Interpretation</i>	
Confirmation that MMO is content with the definition of ‘maintain’.	In the Response to Deadline VII, the Applicant's response to Question 50 states that " <i>This amendment has been agreed with the MMO (see the MMO's letter to the Planning Inspectorate dated 12 September 2013)</i> ".
Whether progress has been made concerning a possible condition for an Operational and Maintenance Plan.	The Applicant has requested that the MMO clarify the benefits of such a 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.	<p>The definition of "relevant planning authority" refers to WSCC and SDNPA. It is used in the following articles:</p> <ul style="list-style-type: none"> <li>• Article 6 (Requirements, Appeals, etc.) – "<i>Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement...</i>"</li> <li>• Article 39 (Procedure in relation to further approvals, etc.) – "<i>Where an application is made to the relevant planning authority, a highway authority, a street authority, a traffic authority or the owner of a sewer or drain for any consent, agreement or approval...</i>"</li> </ul> <p>None of the requirements specify "relevant planning authority", save for the more general requirements at the end, i.e. Requirement 40 (Requirement for written approval), Requirement 41 (Amendments to approved details) and Requirement 42 (Consultation with local planning authority).</p> <p>With the exception of the above, the requirements refer either to WSCC or SDNPA in particular. The requirements are explicit as to the discharging authority so as not to cause confusion for contractors when implementing the Project.</p> <p>However it was considered to be clearer for the more general requirements and articles listed above if "relevant planning authority" was used (and defined in the Interpretation article), rather than "<i>West Sussex County Council or the South Downs National Park Authority within the South Downs National Park</i>" referred to each time (although this can be done if it is thought to be clearer).</p> <p>It is not considered that the definition of "relevant planning authority" being used in a number of cases is confusing, as the requirements and articles in question do not specifically refer to plans/documents to be produced and signed off within</p>

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	WSSC or SDNPA's jurisdiction.
Whether a definition for 'decommission' should be included	It is not thought necessary to include a definition. The word is generally understood and is not defined in the Energy Act 2004.
Whether the definitions of 'street authority' and 'relevant planning authority' under Article 2 are clear	<p>The definition of "street authority" refers to Part III of the New Roads and Street Works Act 1991 (<b>NRSWA</b>). Section 49 of the NRSWA defines "street authority" as follows:</p> <p><i>In this Part "the street authority" in relation to a street means, subject to the following provisions – (a) if the street is a maintainable highway, the highway authority, and (b) if the street is not a maintainable highway, the street managers.</i></p> <p>However, Part III sets out the powers of the street authority and therefore the definition in Article 2 is considered sufficient.</p>
Whether there needs to be inclusion of the term 'access land' under Article 2.	<p>The term "access land" is defined in Article 22 as follows:</p> <p><i>"Access land" means the land described in Schedule 6 (temporary suspension of public access to access land) that is access land for the purposes of the Countryside and Rights of Way Act 2000.</i></p> <p>As the Article refers to Schedule 6, which directly relates to the power under that Article and assists with its interpretation, it is considered that retaining the definition of "access land" within Article 22 is appropriate.</p>
Whether there are any other definitions in this Article where agreement has not been reached.	<p>The Applicant proposes to clarify the definition of "commence" as follows, to make it clear what works would comprise "commencement" under the DCO/DMLs:</p> <p><i>"commence" means, <u>in relation to works seaward of MHWS, beginning to carry out any licensed marine activities authorised by the deemed marine licences at <b>Schedule 13</b> (deemed licence under the Marine and Coastal Access Act 2009 – array) and <b>Schedule 14</b> (deemed licence under the Marine and Coastal Access Act 2009 – export cables) and, in respect of any other works comprised in the authorised project, any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or</u></i></p>

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	<p><i>other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "commencement" shall be construed accordingly;</i></p> <p>The Applicant is not aware of any other definitions that have not been agreed.</p>
<p><i>Article 6 - Requirements, Appeals, etc.</i></p>	
<p>Whether progress has been made on this definition including clarification in relation to the definition of 'relevant planning authority' in Article 2</p>	<p>See above.</p>
<p><i>Article 7 - Benefit of the Order</i></p>	
<p>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</p>	<p>The Applicant proposes the following wording in order to address the MMO's concern regarding enforcement in relation to breaches prior to transfer:</p> <p>(4) <i>Where the undertaker has transferred any benefit and/or a deemed marine licence, or for the duration of any period during which the undertaker has granted any benefit and/or a deemed marine licence under paragraph (1) or (3)—</i></p> <p>(a) <i>the benefit and/or a deemed marine licence transferred or granted ("the transferred benefit") shall include any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates;</i></p> <p>(b) <i>the transferred benefit shall reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit shall not be enforceable against the undertaker <u>save in the case of a deemed marine licence transferred or granted in respect of any breach of an obligation by the undertaker which occurs prior to such transfer or grant.</u></i></p>
<p>Whether applicant can explain the commercial reasons for its adoption of the version 4 wording of Article 7</p>	<p>The wording of Article 7 is an evolution of the wording in previously consented DCOs, as is the splitting of DMLs. When the transmission assets are transferred to an offshore transmission operator (<b>OFTO</b>) it is important that the undertaker and the OFTO can be clear as to where their obligations lie. Article 7(4)(b) therefore makes clear that, in the case of the transfer of any benefit and/or a marine licence, it shall "<i>reside exclusively with the transferee or, as</i></p>

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	<p><i>the case may be, the lessee and the transferred benefit shall not be enforceable against the undertaker" (save in the case of a DML transferred or granted in respect of any breach of an obligation by the undertaker which occurs prior to such transfer or grant – see above).</i></p>
<p>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</p>	<p>See above.</p>
<p><i>Article 10 - Abatement of works abandoned or decayed</i></p>	
<p>Whether agreement has been reached between applicant and MMO regarding the wording of this article</p>	<p>The MMO's response to Deadline VII dated 15 October 2013 states that:</p> <p><i>"The MMO's response to Deadline IV on 12 September still stands: AP7 – Regarding Article 10 of the DCO, Abatement of works abandoned or decayed, the MMO advise the inclusion of wording to ensure any remediation works will be carried out in accordance with, or to the standards outline within the decommissioning plan, unless otherwise agreed with the Secretary of State."</i></p> <p>The Applicant's response to Deadline VII dated 15 October 2013 states that:</p> <p><i>"The Applicant is not proposing any further revisions to Article 10. Article 10 and Requirement 16 are two separate provisions and the Applicant considers that it is not appropriate to link one to the other.</i></p> <p><i>In any event, Article 10(1) states that "Where the array or any part of it is abandoned or allowed to fall into decay the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore or remove the array or any relevant part, and restore the site of the relevant part to a safe and proper condition, within an area and to such an extent as may be specified in the notice". Therefore there is provision for the notice to set out how the site should be restored."</i></p> <p>The Applicant considers that its above response still stands.</p>
<p>Whether there is a need for the inclusion of a requirement or requirements in</p>	<p>In the Applicant's response to Question 2Q 76 (Response to Deadline VII) the Applicant states that an "end of operational</p>

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<p>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</p>	<p>life plan" (rather than a decommissioning plan) would be more suitable to reflect the relevant regulatory situation and ownership split of the wind farm and transmission assets at the point at which the wind farm ends commercial operation.</p> <p>The Applicant's reasons for this position were outlined and the following requirement proposed:</p> <p><u>End of operational life plan</u></p> <p>(1) <i>Upon the cessation of commercial operation of Work No. 1, an end of operational life plan for Work No. 25 shall be submitted to Mid Sussex District Council.</i></p> <p>(2) <i>Where decommissioning of Work No. 25 is proposed, the end of operational life plan shall specify a scheme for doing so which shall be approved by mid Sussex District Council.</i></p> <p>(3) <i>The scheme under paragraph (2) shall be implemented as approved.</i></p>
<p><i>Article 13 – Crown Rights</i></p>	
<p>Whether there is evidence that the Crown Estate and relevant Government departments are content with the terms of the DCO proposed in version 4.</p>	<p>The Crown Estate's letter dated 9 September 2013 to the Planning Inspectorate states that subject to the wording of Article 13 being updated (which has been included in Version 4 of the draft DCO), The Crown Estate confirms that in accordance with Section 135(2) of the Planning Act 2008 that it is satisfied with the wording proposed for Article 13.</p>
<p>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.</p>	<p>The Applicant has requested consent from each of the Crown bodies. Consent has been received from the Crown Estate (albeit no compulsory acquisition is required from the Crown Estate's interests). The Applicant continues to chase the other relevant Crown bodies.</p>
<p>Article 14 - Defence to proceedings in respect to statutory nuisance</p>	<p>The Applicant's response to ExA Question 2Q 85 is set out below. However, please also note the response to Question 2Q 89 which states that it is not expected that any statutory nuisance will occur.</p> <p><u>Question 2Q 85</u></p> <p>The Applicant reiterates that Section 158 of the Planning Act 2008 provides a general defence to statutory nuisance. It states the following:</p>

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	<p><i>Nuisance: statutory authority</i></p> <p>(1) <i>This subsection confers statutory authority for—</i></p> <p style="padding-left: 40px;">(a) <i>carrying out development for which consent is granted by an order granting development consent;</i></p> <p style="padding-left: 40px;">(b) <i>doing anything else authorised by an order granting development consent.</i></p> <p>(2) <i>Statutory authority under subsection (1) is conferred only for the purpose of providing a defence in civil or criminal proceedings for nuisance.</i></p> <p>(3) <i>Subsections (1) and (2) are subject to any contrary provision made in any particular case by an order granting development consent.</i></p> <p>This provision reflects the general principle of law that actions by a person with statutory authority cannot be subject to injunction and that an action in damages only is available to an aggrieved party. As a public nuisance may also be a criminal offence, the immunity is extended by Section 158 to such situations.</p> <p>Article 14 (defence to proceedings in statutory nuisance) of the draft DCO amends the terms of the defence in the case of noise nuisance brought under Section 82(1) of the Environmental Protection Act 1990 only, other types of nuisance continuing to have the general defence afforded by Section 158. Therefore Article 14 is restricting the defence that would otherwise be available under Section 158 in relation to noise.</p> <p>As previously noted, the defence under Article 14 is available if the noise relates to the construction or maintenance of the Project and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974 or cannot reasonably be avoided, or the use of the Project and is in accordance with a scheme of monitoring and attenuation of noise or cannot reasonably be avoided. This places the onus on the Applicant to secure such approvals for schemes pursuant to Section 61 of the Control of Pollution Act 1974 or other noise attenuation scheme.</p> <p>The general defence under Section 158 is necessary in the unlikely event that proceedings are brought under Section 82 of the Environmental Protection Act 1990. The Project comprises nationally significant infrastructure and as a result it is appropriate that the Project is protected. In relation to proceedings under Section 82 only, the Applicant is content amend the general defence under Section 158 in relation to</p>

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	<p>noise as per Article 14.</p> <p><u>Question 2Q 89</u></p> <p>As stated in the Statement of Engagement submitted with the Application, it is not considered that any properties will be affected beyond statutory nuisance thresholds, as mitigation measures will be used to control noise emissions. Therefore a plan as requested under Question 2Q 89(a) is not required. General noise mitigation measures that will be used during construction at the substation, HDD sites and cable route are set out in the Outline Construction Noise Management Plan (CNMP), which a final version is required by DCO Requirement 36 ahead of construction. Specific mitigation measures for particular areas will be defined, under the terms of the CNMP. Such specific measures may include noise barriers and timing of noisy works, where possible, to avoid the most sensitive times of the day. The Applicant will also aim to keep local residents adjacent to any noisy works up to date with expected timings of the works.</p>
<p>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).</p>	<p>N/A</p>
<p><i>Article 15 – Street Works</i></p>	
<p>Whether there is a need to include a reference to the street authority in this article.</p>	<p>It is not considered that there is any such need. The Article provides a power to break up or open the streets, tunnel or place apparatus under the streets etc. There is no requirement for consent from the street authority in relation to this power (although it is noted that sections 54 to 106 of the NRSWA apply which require notice and coordination of works etc.).</p>
<p><i>Article 17 – Public rights of way</i></p>	
<p>Whether paragraph (2) is clear and precise as to which is the relevant highway authority to be referenced in this provision.</p>	<p>There is a definition of "relevant highway authority" in Article 2, being "<i>the local highway authority for the area in which the relevant highway to which the relevant provision of this Order applies is situated</i>".</p>

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	For the onshore Order limits this is WSCC and the Applicant acknowledges that this definition could be amended accordingly to refer to WSCC.
Whether there should be reference to consultation with SDNPA as per Requirement 22.	The Applicant does not consider this to be necessary. As noted in the Applicant's response to ExA Question 2Q 58, the Articles in the draft DCO provide the undertaker with a range of powers (in this case, to temporarily stop up public rights of way), but Article 3 makes clear that the use of these powers is constrained by the requirements. Requirement 22(2) provides for consultation with SDNPA in respect of any proposed closure or diversion of a National Trail.
Whether Schedule 4 - Public rights of way to be temporarily stopped up – is correct.	The Applicant considers this to be correct.
<i>Article 18 - Access to works</i>	
Whether sub paragraph (2) should refer to the 'relevant highway authority' and not West Sussex County Council.	<p>There is a definition of "relevant highway authority" in Article 2, being "<i>the local highway authority for the area in which the relevant highway to which the relevant provision of this Order applies is situated</i>".</p> <p>For the onshore Order limits this is WSCC and the Applicant acknowledges that this definition could be amended accordingly to refer to WSCC.</p>
<i>Article 19 – Agreements with street authorities</i>	
Whether the definition of 'street authority' in Article 2 is clear	The Applicant considers that this definition is clear as it refers to the NRSWA (see response above in relation to Article 2).
Whether the definition of 'relevant planning authority' in Article 2 is clear.	<p>The Applicant considers that this definition is clear as it refers to the two discharging authorities under the DCO, being WSCC and SDNPA.</p> <p>Please see above.</p>
<i>Article 21 - Authority to survey and investigate the land</i>	
Whether there is agreement on the addition of (5) by the owners and	Agreement has not been sought from owners and occupiers in relation to this.

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occupiers of the land.	
<i>Articles 23-35 and 41 – Compulsory Acquisition</i>	
<p>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:</p> <ul style="list-style-type: none"> <li>• provide an update regarding the progress of negotiations</li> <li>• raise queries and/or concerns regarding provisions dealing with compulsory acquisition of land or of rights in, on, over or under land.</li> </ul>	<p>See Appendix 1 of this note which provides an update regarding negotiations with statutory undertakers.</p> <p>An update will be provided by the Applicant at the Hearing regarding agreement of protective provisions and possible withdrawal of section 127 applications.</p>
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.	Please see above.
Whether any uncertainties remain outstanding regarding the Book of Reference ( <b>BoR</b> ) 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).	It is not believed that there are any further uncertainties regarding the Book of Reference but clearly in a project of this size, details regarding land changes on a frequent basis. The Applicant proposes (as it always had proposed) provide a final Book of Reference to be suitable for certification immediately prior to the close of the examination.
<i>Article 37 – Felling or lopping of trees and removal of hedgerows and Article 38 – Trees subject to tree preservation orders</i>	
<p>In response to 2Q58, NE and WSCC have both expressed concern with the drafting of Articles 37 and 38.</p> <p>Whether NE, WSCC and applicant can</p>	<p>As noted in the Applicant's response to ExA Question 2Q 58, the Applicant reiterates that it is not necessary to amend Articles 37 and 38 to link with Requirement 31(2). In general terms, the Articles in the draft DCO provide the undertaker with a range of powers (e.g. to fell or lop trees</p>

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<p>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.</p>	<p>and remove hedgerows), but the use of these powers is constrained by the requirements (e.g. Requirement 31 which provides for the submission of a hedgerows management plan and arboricultural method statement), which provide that the Project shall be constructed and operated in accordance with the assessments in the Environmental Statement.</p>
<p><i>Article 39 - Procedure in relation to further approvals, etc. and Article 40 – Certification of plans etc.</i></p>	
<p>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.</p> <p>Refer to Statement in Appendix A in relation to scope, content, adequacy and timing of information related to further approvals.</p>	<p>The Applicant has considered the ExA's comments set out in Appendix A of the Agenda. Subject to any further comments on Appendix 9 (Document submissions and discharging bodies for the DCO requirements and DML conditions) the following proposals are made:</p> <ul style="list-style-type: none"> <li>i) Appendix 9 will be a certified document for the purposes of Article 40</li> <li>ii) Article 39(2) shall be amended as follows: <p style="margin-left: 40px;"><i>Where an application is made to the relevant planning authority, a highway authority, a street authority, a traffic authority or the owner of a sewer or drain for any consent, agreement or approval required under any of the provisions of this Order such application shall, where appropriate, conform to the objective standard as set out in the submissions and discharging bodies document and shall be accompanied by proper and sufficient plans of the proposal and such consent, agreement or approval shall, if given, be in writing and may be given subject to such reasonable terms and conditions as the authority or owner may require and shall not be unreasonably withheld.</i></p> </li> </ul>
<p><i>Article 42 – Arbitration</i></p>	
<p>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</p>	<p>Any arbitration under Article 42 would comprise a "statutory arbitration" for the purpose of Section 94 of the Arbitration Act 1996. As such the provisions of Part 1 of the 1996 Act would apply to an arbitration in England Wales and Northern Ireland, and contain mandatory provisions (listed in Schedule 1) which have effect notwithstanding any agreement to the contrary, and non-mandatory provisions which allow the parties to make their own arrangements by agreement, but provide rules which apply in the absence of such agreement.</p> <p>As such it is not thought that the wording of the Article</p>

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<p>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.</p>	<p>requires further amendment.</p> <p>Third parties could engage in the arbitration process. Section 95 specifically provides that the provisions of Part 1 apply to a statutory arbitration:</p> <p><i>"(a) as if the arbitration were pursuant to an arbitration agreement and as if the enactment were that agreement and</i></p> <p><i>(b) as if the persons by and against whom a claim subject to arbitration in pursuance of the enactment may be or has been made were parties to that agreement".</i></p> <p>It is suggested that Article 42 is amended as follows:</p> <p><i>Any difference or dispute under any provision of this Order, unless otherwise provided for, shall 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) by the decision-maker.</i></p> <p>"Decision maker" is defined in Article 2.</p>
<p>Whether the arbitration process would provide potential for third party engagement and involvement where third parties wished engagement.</p>	<p>See above.</p>
<p>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'</p>	<p>See above.</p>
<p><i>Requirement 5</i></p>	
<p>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.</p>	<p>Shoreham Port Authority verbally confirmed its agreement at the Issue Specific Hearing on 1 November 2013.</p>

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<i>Requirements 17 - 23</i>	
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).	N/A
<i>Requirement 25</i>	
Whether WSCC is content with the amended wording of this requirement.	The Applicant confirms that this Requirement has been amended, as Requirement 26 (Landfill site) deals with areas of known contamination.
<i>Requirement 28</i>	
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.	N/A
<i>Requirement 29</i>	
Whether WSCC, NE and EA are content with the redrafted wording of this requirement.	N/A
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.	N/A
<i>Requirement 30</i>	
Confirmation by all parties of their	SDNPA has confirmed to the Applicant that it is content for

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agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII.	WSCC to be the discharging authority in relation to this requirement.
<i>Requirement 31 and 31A</i>	
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?	N/A
<i>Requirement 32</i>	
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.	N/A
<i>Requirement 33</i>	
Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII.	SDNPA has confirmed to the Applicant that it is content for WSCC to be the discharging authority in relation to this Requirement.
<i>Requirement 34</i>	
Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII.	SDNPA has confirmed to the Applicant that it is content with the wording of this Requirement.
<i>Requirement 35 and 35A</i>	
Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to	N/A

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Deadline VII.	
<i>Requirement 36</i>	
Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII.	SDNPA has confirmed to the Applicant that it is content for WSCC to be the discharging authority in relation to this requirement.
<i>Requirements 38 and 38A</i>	
Whether WSCC, NE and SDNPA are content with the redrafted wording to this requirement.	N/A
Whether there should be a further requirement to cover offshore EPS such as the harbour porpoise	The Applicant does not consider such a provision is necessary and it has not been requested by the MMO.
<i>Requirement 39</i>	
Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII.	N/A
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.	The term relates solely to Requirement 39 and should therefore be defined in Article 39A(2).
<i>Requirement 39A</i>	
Confirmation by all parties of their agreement to the position set out in Appendix 8 of applicant's submission to Deadline VII.	N/A

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<i>Requirement 40</i>	
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).	West Sussex County Council has only proposed to provide a lead co-ordination role for the discharge of requirements and implementation during construction. Given the focused nature of the substation within the boundaries of Mid Sussex District Council and the timescales for this requirement the Applicant considers that Mid Sussex District Council would provide the most suitable authority.
<i>Requirement 41</i>	
Whether SDNPA is content with the redrafted wording of this requirement.	N/A
<i>Requirement 43</i>	
Whether this requirement is appropriate in the circumstances of the proposed project  Or, alternatively, whether it could be redrafted to enhance clarity.	The Applicant believes this requirement to be appropriate.
<i>Schedule 1 - Authorised Project, Part 1 Authorised Development</i>	
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.	The Applicant notes that as indicated at the Issue Specific Hearing, wording is proposed to be included regarding an offshore structures exclusion zone (please see below). However, this does not change the Order limits in the DCO.
<i>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.</i>	
Whether any party wishes to raise points in connection with the version 4 wording of any of these schedules.	N/A

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<p><i>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.</i></p>	
<p>Whether any party wishes to raise any points in connection with the version 4 wording of these schedules.</p>	<p>N/A</p>
<p><i>Schedule 10 - Important Hedgerows and Schedule 11 - Trees subject to Tree Preservation Orders.</i></p>	
<p>Whether any party wishes to raise any points in connection with version 4 wording of these schedules.</p>	<p>N/A</p>
<p><i>Schedule 12 - Protective Provisions</i></p>	
<p>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.</p> <p>Whether any party wishes to raise any points in connection with this schedule</p>	<p>The Applicant will provide an update at the Hearing.</p>
<p><i>Schedule 13 - Deemed licence under Marine and Coastal Access Act 2009 – array, Part 1 Licensed Marine Activities</i></p>	
<p><i>Section 1</i></p>	
<p>Whether the relationship between works falling under the definition of ‘maintain’ and the works falling under the definition of ‘decommission’ is sufficiently clear</p>	<p>The DMLs do not authorise decommissioning. In the interests of clarity it is proposed that the following wording is added to the Array DML:</p> <p><i>"This licence does not permit the decommissioning of the authorised scheme. No authorised decommissioning activity shall commence until a decommissioning programme in accordance with an approved programme under Section 105(2) of the 2004 Act has been submitted to the Secretary of State for approval. Furthermore, at least four months prior to carrying out such works the undertaker shall notify the MMO of the proposed decommissioning activity to establish whether a marine licence is required for such works."</i></p>

Agenda Item	Applicant Response															
<i>Section 3</i>																
Whether the spatial extent of the array as reflected in the grid coordinates is acceptable	<p>The Applicant notes that as set out in the Issue Specific Hearing, wording is proposed to be included regarding an offshore structures exclusion zone. However, this does not change the Order limits in the DCO.</p> <p>The proposed wording is set out below.</p>															
Whether any changes should be made to any of the physical parameters of the array marine activities and development scheme from those currently proposed	<p>As outlined at the Issue Specific Hearing it is proposed to prevent the installation of offshore structures within a triangular area to the eastern end of the offshore Order limits.</p> <p>It is proposed to include wording in Condition 1 in Schedule 13 (Array DML) as follows:</p> <p>(5) <i>No wind turbine generator or offshore substation forming part of the authorised scheme shall be erected within the area hatched black on the works plan, whose coordinates are specified below:</i></p> <table border="1" data-bbox="762 1077 1422 1417"> <thead> <tr> <th><i>Point</i></th> <th><i>Latitude</i></th> <th><i>Longitude</i></th> </tr> </thead> <tbody> <tr> <td><i>1</i></td> <td>50° 40.917823 N</td> <td>000°0 5.833581 W</td> </tr> <tr> <td><i>2</i></td> <td>50° 40.653245 N</td> <td>000° 04.437177 W</td> </tr> <tr> <td><i>3</i></td> <td>50° 39.528587 N</td> <td>000° 01.467718 W</td> </tr> <tr> <td><i>4</i></td> <td>50° 38.589900 N</td> <td>000°0 8.985800 W</td> </tr> </tbody> </table> <p>As indicated in the Applicant's response to 2Q 84 it is proposed to amend Condition 1 as follows:</p> <p>(3) <i>The layout of all wind turbine generators and offshore substations within the Order limits shall comprise a contiguous arrangement of offshore structures.</i></p> <p>(4) <i>All wind turbine generators of the same size shall be arranged in an orthogonal pattern such that along each row axis an approximately equal distance between wind turbine generators.</i></p>	<i>Point</i>	<i>Latitude</i>	<i>Longitude</i>	<i>1</i>	50° 40.917823 N	000°0 5.833581 W	<i>2</i>	50° 40.653245 N	000° 04.437177 W	<i>3</i>	50° 39.528587 N	000° 01.467718 W	<i>4</i>	50° 38.589900 N	000°0 8.985800 W
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<i>Schedule 13 - Deemed licence under Marine and Coastal Access Act 2009 – array, Part 2</i>																
<i>Condition 5</i>																

Agenda Item	Applicant Response
Whether MMO, MCA and Trinity House are content with the amendments	N/A
<i>Condition 5B</i>	
Whether MCA and Trinity House are content with the amendment Conditions 6(2), 6(11) and 6(12)	N/A
Whether MMO is content with the amendments and additions	N/A
<i>Condition 8</i>	
Whether progress has been achieved in discussions between MMO and applicant regarding the revised wording of this condition.	Comments are awaited from the MMO.
<i>Condition 12</i>	
Whether MMO is content with the amendments and additions	N/A
<i>Condition 13</i>	
Whether MMO is content with the amendments	N/A
<i>Condition 14</i>	
Whether MMO is content with the amendments, deletions and additions	N/A
<i>Schedule 14 - Deemed licence under Marine and Coastal Access Act 2009 – export cable</i>	
Whether any party wishes to comment upon any of the conditions set out in	N/A

Agenda Item	Applicant Response
version 4 of the draft Export Cable(s) Licence.	
Whether 14(2)(a) should be re-instated and reworded as requested by MMO.	Condition 14(2)(a) has been replaced in the export cable DML because the original wording relates to a swath bathymetric survey and side scan sonar survey around a sample of adjacent turbines. There are no turbines included within this DML.
<i>Additional conditions proposed by the Applicant</i>	
Fish spawning	<p>Two further conditions are proposed as follows:</p> <p><i>Black Bream Spawning</i></p> <p>(1) <i>No pile driving works for monopile foundations shall be carried out by or on behalf of the undertaker as part of or in relation to the authorized scheme between [15 April] and [30 June] each year, unless the MMO provides written confirmation to the undertaker beforehand that such works can take place in all or in a specified part of the Order limits, or during this period or part of this period.</i></p> <p>(2) <i>No pile driving works for jacket foundations (pin piles) shall be carried out by or on behalf of the undertaker as part of or in relation to the authorized scheme between [15 April] and [30 June] each year within the black bream restriction zone unless the MMO provides written confirmation to the undertaker beforehand that such works can take place in all or in a specified part of the zone, or during this period or part of this period.</i></p> <p>(3) <i>In considering whether to provide the confirmation referred to in (1) or (2) above, the MMO shall have regard to any report or reports provided to the MMO by or on behalf of the undertaker relating to such matters as additional baseline information piling management measures, installation techniques or noise propagation modeling.</i></p> <p>(4) <i>In this condition, "black bream restriction zone" means the area shaded [blue] on the works plan.</i></p> <p>NOTE: It has now been agreed with MMO/CEFAS that the black bream restriction zone will be defined by a radius taken from the south-eastern boundary of the MCZ as currently defined, rather than an arbitrary east-west split of the Order limits.</p>

Agenda Item	Applicant Response
	<p><i>Herring Spawning</i></p> <p>(1) <i>No pile driving works for monopile foundations shall be carried out by or on behalf of the undertaker as part of or in relation to the authorised scheme between [25 November] and [5 January] each year, unless the MMO provides written confirmation to the undertaker beforehand that such works can take place in all or in a specified part of the Order limits, or during this period or part of this period.</i></p> <p>(2) <i>No pile driving works for jacket foundations (pin piles) shall be carried out by or on behalf of the undertaker as part of or in relation to the authorised scheme between [25 November] and [5 January] each year within the herring restriction zone unless the MMO provides written confirmation to the undertaker beforehand that such works can take place in all or in a specified part of the zone, or during this period or part of this period.</i></p> <p>(3) <i>In considering whether to provide the confirmation referred to in (1) or (2) above, the MMO shall have regard to any report or reports provided to the MMO by or on behalf of the undertaker relating to such matters as additional baseline information, piling management measures, installation techniques or noise propagation modeling.</i></p> <p>(4) <i>In this condition, "herring restriction zone" means the area shaded [green] on the works plan.</i></p> <p>NOTE: It is envisaged that the herring restriction zone will be defined following further discussions with the MMO/Cefas in the context of the Brown and May Marine Herring Baseline Report and the need to formulate workable piling restrictions which do not unduly constrain the construction of the Project.</p>
Construction compounds	<p>A number of parties (particularly WSCC) have expressed uncertainty about the location of construction compounds. Indeed this is now understood by the Applicant to be the main concern by WSCC over lack of detail over aspects of the onshore works. In the Applicant's response to Question 118 (Deadline II) the Applicant made clear that at this time the Applicant is not seeking to identify further compounds, and the ES for the Project assesses a proposal for the site that it is possible to build. Any additional compounds outside the scheme would be required purely as a result of a contractors preferred method of executing the works and would be subject to a separate application and (if necessary) EIA.</p> <p>Three main construction compounds have been identified</p>

Agenda Item	Applicant Response
	<p>within the Application, as follows:</p> <ul style="list-style-type: none"> <li>• Landfall point – Brooklands Pleasure Park (Work No. 6)</li> <li>• Edburton Road – north of Tottington Mount and south of Tottington Manor (Work No. 21)</li> <li>• Onshore substation location, Twineham (Work No. 29)</li> </ul> <p>As set out in response to Question 119 (Deadline II) the site compounds at the landfall point and onshore substation are expected not to exceed 150x100m. The site compound at Edburton Road will be smaller, as its primary purpose is for storage of plant and equipment and materials for the cable route section at the northern end of Tottington Mount, and is expected not to exceed 100m x 50m.</p> <p>Four sets of Horizontal Directional Drill (HDD) entry and exit compounds have been identified within the Application, as follows:</p> <ul style="list-style-type: none"> <li>• Landfall Point (entry compound to be located within Brooklands construction compound) (Work Nos. 7 and 9)</li> <li>• Network Rail Crossing Point (Work No 11)</li> <li>• A27 Crossing Point (Work Nos. 13, 14 and 15)</li> <li>• River Adur and A283 Crossing Point (Work Nos. 18 and 19)</li> </ul> <p>The HDD entry compound will have typical dimensions of 50mx50m or variations of these dimensions to achieve a practical 2500m<sup>2</sup> working area.</p> <p>The HDD exit compound will have typical dimensions of 30mx25m or variations on these dimensions to achieve a practical 750m<sup>2</sup> working area.</p> <p>In addition to the main construction and HDD compounds a number of smaller moveable satellite compounds may be required along the cable route. The number will depend on various factors, including the number of work areas that are present along the cable route and the proximity of the work areas to the main compounds. The location of these satellite compounds needs to be flexible so that they can follow the sequencing of the work areas.</p> <p>The dimensions of these compounds will depend on the specific location but are not expected to exceed 30mx50m and will in any case be contained within the cable route working width. No additional ground preparation measures over and above the topsoil strip for the cable installation works are required for the satellite compounds.</p>

Agenda Item	Applicant Response
Onshore substation	<p>It is proposed to amend Requirement 18(3) as follows:</p> <p>(3) <i>No building comprised in Work No. 25 shall exceed 6 metres in height above ground level and shall not exceed [ ] metres in length and [ ] metres in width.</i></p> <p>(4) <i>No external equipment comprised in Work No. 25 shall exceed 10.5 metres in height above ground level.</i></p> <p>Figures in square brackets are to follow.</p>