



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

Rampion Offshore Wind Farm and connection works

Examining Authority's Report of Findings and Conclusions

and

Recommendation to the

Secretary of State for Energy and Climate Change

Lorna Walker, Frances Fernandes and Glyn Roberts

Examining Authority

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Examining authority's report of Findings and Conclusions and Recommendation for the Rampion Offshore Wind Farm and connection works

File Ref EN010032

The application, dated 1 March 2013, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 1 March 2013.

The applicant is E.ON Climate and Renewables UK Rampion Offshore Wind Limited.

The application was accepted for examination on 25 March 2013. The examination of the application began on 18 July 2013 and closed on 18 January 2014.

The development proposed comprises construction and operation of up to 175 wind turbine generators (WTGs) with a maximum tip height of 210 metres, up to two offshore substations, inter-array cables between the WTGs and the offshore substations, and export cables to take the electricity generated by the WTGs to shore via transition pits and onshore electrical works consisting of underground cables. The export cable corridor would connect the offshore development to a landfall east of Worthing on the Sussex coast. The onshore transition pits, where the offshore cables join the onshore cables would be located within the Brooklands Pleasure Park in Worthing. The onshore cable corridor would run between the onshore transition pits and the new onshore substation located in Bolney in West Sussex. The route is approximately 26.4km long in a predominantly northerly direction from Worthing, passing through mainly agricultural land and part of the South Downs National Park. The new onshore substation would be located adjacent to the existing National Grid Electricity Transmission PLC substation at Bolney. There would be a need for additional underground cabling between the new substation and the existing substation.

Summary of Recommendation:

The Examining authority recommends that the Secretary of State should make the Order in the form attached.

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ERRATA SHEET – Rampion Offshore Wind Farm - Ref. EN010032

Examining authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 17 April 2014

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

Page No.	Paragraph	Error	Correction
238	7.12	Factual Error	<p>It is stated that: "The relevant policy guidance in relation to compulsory acquisition of Crown Land is the Secretary of State's Guidance on Compulsory Acquisition issued by DCLG in February 2010."</p> <p>However this guidance was superseded by the Planning Act 2008: guidance related to procedures for the compulsory acquisition of land issued by DCLG in September 2013</p>
3	1.1	Factual Error	<p>This paragraph states: "The application, dated 1 March 2013, was made under section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on 1 March 2014."</p> <p>Both dates within the paragraph should read 1 March 2013.</p>

1 INTRODUCTION

- 1.1 The application, dated 1 March 2013, was made under section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on 1 March 2014.
- 1.2 The applicant is E.ON Climate and Renewables UK Rampion Offshore Wind Limited. The application was accepted for examination on 25 March 2013. The examination of the application began on 18 July 2013 and was closed on 18 January 2014.
- 1.3 The proposed development comprises construction and operation of up to 175 Wind Turbine Generators (WTGs) with a maximum tip height of 210 metres, up to two offshore substations with a gross electrical output capacity of up to 700MW, inter-array cables between the WTGs and the offshore substations, and export cables to take the electricity generated by the WTGs to shore via transition pits and onshore electrical works consisting of underground cables. The export cable corridor would connect the offshore development to a landfall east of Worthing on the Sussex coast.
- 1.4 The onshore transition pits, where the offshore cables would join the onshore cables, would be within the Brooklands Pleasure Park in Worthing. The onshore cable corridor would run between these onshore transition pits and a new onshore substation located near Bolney in West Sussex.
- 1.5 The proposed onshore cable route is approximately 26.4km long. It would extend in a predominantly northerly direction from Worthing, passing through mainly agricultural land and part of the South Downs National Park. The proposed new onshore substation would be located adjacent to the existing National Grid Electricity Transmission PLC substation at Bolney. There would be a need for additional underground cabling between the proposed new substation and the existing substation.

Appointment of Examining authority

- 1.6 On 20 May 2013 the Secretary of State for Communities and Local Government appointed the following Panel of three Examining Inspectors as the Examining authority (ExA) for the application under section 65 of the Planning Act 2008 as amended (PA2008) (PD-004):
- Lorna Walker - Lead member of the Panel
 - Frances Fernandes
 - Glyn Roberts
- 1.7 This document is the Examining authority's report to the Secretary of State for Energy and Climate Change (SoS). It sets out the Panel's findings, conclusions and recommendation, as required by s83 (1) of the PA2008.

- 1.8 Having regard to the information submitted to the examination, the Panel is satisfied that the proposed Rampion Offshore Wind Farm development is a nationally significant infrastructure project (NSIP) as defined by s14 and s15 of the PA2008.
- 1.9 The application is also an Environmental Impact Assessment (EIA) development as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. It was accompanied by an Environmental Statement (ES) which in the view of the Panel meets the definition given in Regulation 2(1) of these Regulations. In reaching the recommendation, the environmental information as defined in Regulation 2(1) (including the ES and any other information on the environmental effects of the development) has been taken into consideration in accordance with Regulation 3(2) of these Regulations.
- 1.10 The accepted application was advertised by the applicant and 212 Relevant Representations were received (REP-012 to REP-223).

Procedural decisions

- 1.11 A Preliminary Meeting was held on 18 July 2013 at which the applicant and all other interested parties and statutory parties were able to make representations about how the application should be examined. The timetable for the examination, a procedural decision of the ExA under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), was issued to interested parties on 25 July 2013 (PD-005). It was accompanied by the ExA's first written questions and notification of the publication of the note of the Preliminary Meeting. Other procedural decisions, including those to vary the timetable, are explained below.
- 1.12 Site Visits:
- An onshore inspection of sites to which the application relates was carried out along the proposed cable route, the site for the substation and the landfall in the company of interested parties on 25/26 September 2013 (HR-088 and HR-089).
 - Several unaccompanied site visits were carried out including visits on 10/12 July 2013, 11/12 September 2013 and 7/8 January 2013. The Panel visited the area of the onshore application site, the coastal view points (including night time visits) from which the offshore development would be seen, the proposed onshore cable corridor and substation site. It also viewed a number of existing Offshore Wind Farms (OWFs) off the Kent coast.
- 1.13 As set out in the timetable for the examination (PD-005), and as a result of requests made, as notified on 6 August 2013 (HR-011) and 21 August 2013 (HR-008) the following hearings were convened:

- Issue specific hearings on the draft Development Consent Order (DCO) and Deemed Marine Licence (DML) held on 28 & 29 August 2013;
- Open floor hearings held on 11 & 12 September 2013;
- Issue specific hearing on Biodiversity, biological environment, ecology (including HRA) held on 30 October 2013;
- Issue specific hearing on Landscape/seascape and visual impact held on 31 October 2013;
- Issue specific hearing on Socio-economic impacts (including commercial fishing) held on 1 November 2013;
- Issue specific hearings on the draft Development Consent Order (DCO) and Deemed Marine Licence (DML) held on 6 & 7 November 2013;
- Compulsory Acquisition hearing held on 27 November 2013;
- Issue specific hearing on Biodiversity, biological environment, ecology (including HRA) held on 4 December 2013;
- Issue specific hearings on the draft DCO and DML held on 5 & 6 December 2013.

1.14 Under s60 of the PA2008 an invitation was issued to the local authorities to submit a Local Impact Report (LIR). A joint LIR was subsequently submitted by West Sussex County Council, Horsham District Council, Mid Sussex District Council, Adur District Council and Worthing Borough Council (REP-227). Separate LIRs were also submitted by Brighton and Hove City Council (REP-225) and South Downs National Park Authority (REP-226).

1.15 The Panel issued two rounds of written questions, one in Annex D of the Rule 8 letter on 25 July 2013 (PD-005) and the second round on 24 September 2013 (PD-006). Two Rule 17 requests for further information or written comments under Rule 17 of the EPR, were issued on 21 October 2013 (PD-007) and 13 January 2014 (PD-008) which each constituted an amendment to the examination timetable.

1.16 Under Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP) an application must be accompanied with sufficient information to enable the SoS to meet his statutory duties as the competent authority under the Habitats and Marine Regulations relating to European protected sites. This 'sufficient information' is required in order to inform the Panel's report and recommendation to the SoS regarding the application (made under s74 of the PA

2008) and to provide standalone information to the SoS in order for him to carry out his statutory duties. The applicant submitted a No Significant Effects Report (NSER) in support of the application (APP-055) followed by a Revision B (REP-259) and Revision C (REP-474) together with Habitats Regulations Assessment Matrices, version 5 (REP-476).

- 1.17 The matrices were subsequently updated to produce the Report on the Implications for European Sites (RIES) which compiles documents and signposts the information received with the application and during examination. (PD-037).
- 1.18 Following the completion of the RIES, all interested parties were invited on 13 December 2013 (PD-037) to provide comments upon it. A number of comments were received on the RIES on which the relevant parties commented and the comments and responses themselves are made available to the SoS in the online library of examination documents on the Planning Portal website for this application. This information would enable the SoS to carry out an appropriate assessment (AA) if required as part of his statutory duties as the competent authority.
- 1.19 The applicant's initial view of the other consents required included the following:
- AA and Habitat Regulations Assessment
 - Coast Station Radio Licence
 - Decommissioning scheme
 - Energy generation licence
 - European Protected Species (EPS) Licence (if required)
 - F10 – Notification of Construction Project
 - Marine Licence – moorings
 - Safety Zones
 - Building Regulation approval (if necessary) Environmental Permit for water discharge or waste operations / registration of exempt waste operations and water discharges (as necessary)
 - Environmental Permit for water discharge or waste operations / registration of exempt waste operations and water discharges (as necessary)
 - European Protected Species Licence
 - Flood Defence Consent (for structures in, under or over a main river / permanent culverts)
 - Land Drainage Consent (for structures in ordinary watercourses / permanent culverts)
 - Licence for work affecting badgers
 - Notice of Street Works
 - Permit for transport of abnormal loads (if necessary)
 - Planning permission for 400kV feeder bays at National Grid substation
 - Removal of vegetation close to or on a riverbank

- Section 127 Application to the Secretary of State in relation to National Grid interests
- Section 127 Application to the Secretary of State in relation to Network Rail interests
- Section 127 Application to the Secretary of State in relation to Southern Water interests
- Section 127 Application to the Secretary of State in relation to South Eastern Power Network PLC (SEPN) interests
- Section 132 Applications to the Secretary of State
- Temporary Road Traffic Orders (if construction phase requires closure of any public highway)
- Water Abstraction Licence (if required)
- Waste Production
- Undertakings given to support application

- 1.20 During the examination, certificates were sought by the applicant under s127 of the PA2008 in relation to the relevant property interests and apparatus of National Grid Electricity Transmission PLC (S127-006) and Network Rail Infrastructure Limited (S127-002). These initial s127 applications were subsequently followed by s127 applications made by applicant in relation to relevant property interests and apparatus of Southern Water Services Limited (S127-024) and South Eastern Power Networks PLC (S127-026). The latter applications were applied for during the examination.
- 1.21 Glyn Roberts, a member of the Rampion DCO Panel, was appointed by the relevant Secretary of State as Examining authority for all four s127 applications. The examination timetables for the four discrete s127 examinations were carefully coordinated with the timetable for the Rampion DCO examination. A hearing was arranged and held on 27 November 2013. However, during the examination agreement was reached between the applicant and statutory undertakers resulting in the withdrawal of the representations to the DCO examination relating to the compulsory acquisition of statutory undertakers land and interests. All statutory undertakers withdrew their representations relating to s127 issues in writing - Network Rail Infrastructure Ltd (S127-054), National Grid Electricity Transmission PLC (S127-079), Southern Water Services Ltd (S127-072) and South Eastern Power Networks PLC (S127-075).
- 1.22 Unfortunately an administrative error occurred during the Rampion project examination which only came to light following the closure of the examination. It appears that a limited number of written submissions were not published by the Planning Inspectorate to the national infrastructure pages of the Planning Portal, which is the website to which all material submitted to examinations of NSIP applications, are posted by the Inspectorate. For this reason, not all interested parties to the examination had the same access to all of the submitted examination documents.

- 1.23 The omitted documents were subsequently published by the Planning Inspectorate as soon as was practicable to the Rampion project pages of the National Infrastructure web pages on the Planning Portal. A letter was sent to all interested parties to highlight that the relevant documents had been published to the National Infrastructure pages. The IPs were informed that if they had any comments on the documents that they wanted to draw to the attention of the SoS, this should be sent to the case team by 28 March 2014. These would be forwarded for consideration alongside the Panel's report and recommendation to the SoS.
- 1.24 Under Article 6 of the European Convention on Human Rights parties to civil proceedings, including administrative tribunals such as examinations under the procedures of the PA2008, have a right to a fair and public hearing and have rights of equal access to relevant information such as the various submissions by parties to the examination.

Structure of Report

- 1.25 The report chapters below set out respectively the main features of the proposal and its site, the legal and policy context, the extent and adequacy of the Environmental Assessment (a matter on which the Panel received a number of substantive representations), the Panel's findings and conclusion on all the important and relevant issues, and finally its recommendation. The Order as recommended to be made by the SoS is attached as an appendix, as are a summary of examination events, a list of abbreviations, a list of examination documents and a list of participants in the hearings.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

The present application

Details of the applicant and the application

- 2.1 The application was made by E.ON Climate & Renewables UK Rampion Offshore Wind Limited (E.ON) for development consent to construct a new offshore wind farm and associated offshore infrastructure with a total installed capacity of up to 700MW. The proposed project would lie on the bed of the English Channel approximately 13 km from the Sussex coast and comprise up to 175 three bladed, horizontal axis wind turbines. The nearest coastal ports to the proposed project site would be Brighton, Newhaven, Shoreham-by-Sea, Worthing and Littlehampton.

Description of the Site

- 2.2 The Crown Estate Zone 6 lies in the English Channel off the Sussex Coast (APP-091). The Zone has an overall area of 271km² and is partly defined by known navigational and other constraints, including the Traffic Separation Scheme and Inshore Traffic Zone (ITZ) of the eastern English Channel, approximately 2.8nm to the south, and licenced aggregates extraction areas to the west. E.ON is proposing to develop the Offshore Array wholly within the Zone, which covers 139km² of the total Zone area. This area has been chosen because of its relatively shallow water depth.
- 2.3 Water depths in the proposed Offshore Array area range from a minimum of 18m below Lowest Astronomical Tide (LAT) in the North-West, deepening to a maximum of 59m below LAT in the South-West. Water depths in the export cable corridor range from 0m at landfall to greater than 30m in the South-East Corner. The seabed is predominantly formed of sands and gravels, overlying sands and normally consolidated clays with some peat layers and basal gravels.
- 2.4 The proposed onshore site consists of a landfall site between East Worthing and Lancing and a cable route approximately 26.4km long, running underground through the South Downs National Park and ending at the proposed onshore substation, which would be located adjacent and to the east of the existing 400kV National Grid substation located in the parish of Twineham near Bolney.

Principal works described

- 2.5 The principal works that are proposed, and for which development consent is required, are identified as Work No. 1 in the recommended DCO (Schedule 1, Part 1, Authorised Development). Work No. 1 is described in the application version of the DCO and the Environmental Statement (APP-182 & APP-057 to APP-059).

- 2.6 Work No. 1 (a) would comprise an offshore wind turbine generating station with a gross electrical output capacity of up to 700 MW, the array consisting of up to 175 wind turbine generators each fixed to the seabed by one of six foundation types (namely: monopile foundation, tripod foundation, jacket foundation, Inward Battered Guide Structure (IBGS) foundation, gravity base foundation or suction caisson foundation). Each WTG would be fitted with rotating blades and would be situated within the area hatched on the relevant works plan.
- 2.7 Work No. 1(b) would comprise a network of cables laid underground within the red hatched area on the works plan between WTGs and Work No. 2, for the transmission of electricity and electronic communications between these different structures, and including one or more cable crossings.

Associated development described

- 2.8 Associated development proposed is identified as Work No. 2 to Work No. 32 of the recommended DCO (Schedule 1, Part 1, Authorised Development).
- 2.9 The proposed offshore associated development would consist of up to two offshore substations fixed to the seabed by one of three foundation types (namely: monopile foundation, gravity base foundation or jacket foundation) and a seabed cable running to the landfall point.
- 2.10 The proposed onshore associated development would principally consist of up to twelve underground cables running in up to four trenches (each trench containing up to three cables) extending from mean low water, east of Worthing, to a new onshore converter station adjacent to the National Grid substation at Bolney.

Ancillary works described

- 2.11 Proposed ancillary works are set out in Schedule 1, Part 2 of the recommended DCO, and would include temporary landing places or other means of accommodating vessels in the construction and/or maintenance of the authorised development; buoys, beacons, fenders and other navigational warning or ship impact protection works; and temporary works for the benefit or protection of land or structures affected by the authorised development.

Articles authorising development

- 2.12 The submitted application proposes that the development would be authorised by Article 3 in the submitted draft DCO. However, the proposed works as listed in the recommended DCO would also be subject to a range of other DCO provisions. For example, Article 2 of the application version of the DCO and the

recommended Order defines the terms 'onshore substation' and 'offshore substation' and Requirements 3-6 set out detailed design parameters (Schedule 1, Part 3, Requirements).

Development described in the Environmental Statement

- 2.13 For the purpose of the Environmental Impact Assessment (EIA), the project was assessed against a maximum development envelope of 175 WTGs on one of six foundation types: monopile, tripod, jacket, IBGS, gravity base or suction caisson.
- 2.14 It should be noted that although indicative locations for the offshore structures have been developed and assessed as set out in the ES, the recommended Order would preserve flexibility in the final project design by applying the 'Rochdale Envelope' principle. This is set out in the Explanatory Memorandum (APP-183). The 'Rochdale Envelope' approach is one in which detailed design is reserved as a matter of detail for post consent discharge of relevant requirements and DML conditions.
- 2.15 While the 'Rochdale Envelope' approach is a familiar one in relation to many offshore wind farm applications, its use has presented certain challenges in the case of this application, where the location of the turbine array and substations is highly visible from a densely populated urban coastline and where there are also likely to be significant landscape and visual effects on views of the seascape from an upland National Park. The outline information available for assessment of the onshore elements of the project generated a range of critical responses from relevant statutory bodies, including the South Downs National Park Authority and West Sussex County Council, together with Natural England, the Government's principal advisory body regarding national parks, landscape and ecological matters.
- 2.16 The application proposals also include works to connect the offshore wind farm to the National Grid. Subsea export cables and onshore works required are detailed in the Onshore Project Description section of the ES (APP-059). In response to the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (APFP Regulation 6(1)(b)(i)) the applicant was required to provide a Cable Statement of details of the proposed route and method of installation for the cable (APP-177).
- 2.17 The proposed route of the onshore section of the export cable corridor involves a 40m wide swathe reserved for construction works which extends across the full length of the 26.4 km onshore route with reduced width working where the cable corridor is proposed to be cut through Tottington Mount, an Ancient Monument located in the South Downs National Park. The

proposed cable corridor would involve cable trenching and other associated works within the boundaries of the National Park.

Key location maps and plans - examination library references

- 2.18 The applicant submitted the original plans with the application documents, including the Location Plan, the Land Plan Key Plan, the Offshore Land Plans, Special Category Land Plans, and Works Plans (offshore and onshore) (APP-003 to APP-030).
- 2.19 During the course of the examination further plans were submitted, including an updated Offshore Works Plan (REP-503). Plans that may be relevant for consideration of the DCO application have also been submitted as supporting documents for the s127 applications made by the applicant to the Secretary of State, and received for deadline VII of 15 October 2013 (s.127-029 to s.127-044).

Amendments to the application during examination

- 2.20 A Deemed Marine Licence (DML) was included within the draft application version of the DCO at Schedule 13 (APP-182), as provided for in section 149A of the PA2008. A change to the DCO was made at deadline II on 15 August 2013 (REP-320) splitting the DML into two licences. One DML (Schedule 13 of the recommended DCO) would govern the wind farm Array, and the other DML (Schedule 14 of the recommended DCO) would govern the offshore Export Cables. The principal enforcement body in the offshore environment, the Marine Management Organisation, considered options in relation to the use of multiple DMLs as stated in the first Statement of Common Ground (SoCG) with the applicant (REP-240) and their relevant representation (REP-132).
- 2.21 The split DMLs contained many of the same provisions as the original DML and were discussed during the issue specific hearings on 28 and 29 August 2013 (HR-009 to HR-022), on 6 and 7 November 2013 (HR-053 to HR-063), and on 5 and 6 December 2013 (HR-078 to HR-87). No change to the nature of the authorised development was proposed as a result of this split. The ExA considered that the change within the arrangement of the Order was not so significant as to require consultation beyond that which occurred under the Examination Procedure Rules.
- 2.22 As discussed in the applicant's response (REP-478), as a result of discussions with Shoreham Port Authority, the applicant revised the export cable corridor included on the updated Works Plan (REP-503) in order to avoid the port's main anchorage area off Shoreham and to define an 'export cable exclusion zone'.
- 2.23 Shoreham Port Authority confirmed in its response to deadline VIII (REP-437) that the proposed export cable exclusion zone would, in its view, represent a significant improvement to the application.

- 2.24 Following discussions with Natural England the applicant proposed that an area to the eastern edge of the development boundary be designated as a 'structures exclusion zone' within the Order. Appendix 4 of the response to deadline VIII illustrates the proposed structures exclusion zone (REP-469) and it is further discussed in the written response to deadline VIII (REP-444). This alteration to the proposed layout parameters was intended to mitigate the effect of the proposed development on the Heritage Coast by increasing the distance between the nearest potential turbine location and reducing the extent of the horizon occupied by the wind farm. The applicant suggests that other benefits of the structures exclusion zone include reduced impacts on marine ecology, shipping and navigation and commercial fishing.
- 2.25 The inclusion of the structures exclusion zone and the related Requirement 2(5) within the DCO is considered in detail in chapter 4 of this report.
- 2.26 The Panel concludes, as set out in its recommendations, that the application as amended by all the changes are within the scope of the proposals assessed in the EIA. None of the amendments is substantive enough to constitute a different application from the one submitted, even when these are considered in combination. In addition, having regard to the consultation carried out at the time by the ExA, it is considered that all interested parties were provided with an adequate opportunity to comment upon the changes proposed by the applicant before the close of the examination. Accordingly, therefore, the Panel also finds that the SoS would have power under s114(1) to make an Order in the form recommended.

Planning history

- 2.27 With regard to the Bolney substation site, the LIR from the Joint Councils points out that numerous planning consents have been granted over the years in order to expand the existing National Grid Electricity Transmission PLC (NGET) substation site, predominantly in the 1970s. Having regard to the planning history of the existing Bolney NGET substation site no local authority objection was raised to the proposed new Rampion onshore substation, which is to be located close to the existing NGET substation. Furthermore, the Panel notes that no party has raised any other planning history or current planning application that might have any material effect upon or in combination with the Rampion DCO application in its comments or recommendations to the ExA.
- 2.28 The Panel therefore concludes that no significant planning objections to the proposed Rampion Offshore Wind Farm development project arise from the planning history of the application site. All other aspects of planning policy and context are set out in chapter 3 of this report.

3 LEGAL AND POLICY CONTEXT

- 3.1 This report sets out in detail all the important and relevant matters in the context of the following legislation and policy. The applicant sets out the legal and policy context in a number of documents including:
- ES Section 4 – Planning Policy (APP-061) and accompanying Figures (APP-094);
 - Consents and licences required under other legislation (APP-056);
 - Review of the proposed Rampion Offshore Wind Farm against National Policy Statements (REP-266).
- 3.2 It should be noted that various other documents submitted by the applicant contain reference to the policy and legislative context of the application. Interested parties have also discussed the legal and policy context in relation to the application and policy reviews were included in LIRs which are discussed in detail in this chapter.

Planning Act 2008, as amended

- 3.3 The application is for a Nationally Significant Infrastructure Project (NSIP), namely an offshore generating station with a gross electrical output capacity of up to 700MW comprising up to 175 wind turbine generators. The Panel finds that the proposal falls within the terms of s14(1)(a) in that it consists of the construction of a generating station, and within s15(3) as the capacity exceeds 100 megawatts and therefore that s104 of the PA2008 applies.
- 3.4 S104(1) of PA2008 applies *'in relation to an application for an order granting development consent if a national policy statement (NPS) has effect in relation to development of the description to which the application relates.'* NPSs have effect in relation to this application and therefore s104 PA2008 applies.
- 3.5 S104(2) PA2008 sets out the matters to which the SoS must have regard in deciding an application submitted in accordance with PA2008. In summary, the matters set out in s104(2) include any relevant NPS, any appropriate marine policy documents, any local impact report and any other matters the SoS thinks are both important and relevant to the decision.
- 3.6 S104(3) of PA2008 requires that the SoS must decide the application in accordance with any relevant NPS, except to the extent that the SoS is satisfied that, in summary, doing so would:
- lead to the United Kingdom being in breach of its international obligations;
 - lead to the SoS being in breach of any duty imposed on him under any enactment;
 -

- be unlawful under any enactment; or:
- the adverse impact of the proposed development would outweigh its benefits, or;
- that any prescribed condition for deciding the application, otherwise than in accordance with the NPS, would be met.

- 3.7 This report sets out the Panel's findings and conclusions and recommendation taking these matters fully into account.
- 3.8 S104(3) requires that the SoS must decide the application in accordance with the NPS. S104(2) of PA2008 further requires that in deciding the application the SoS must have regard to any NPS which has effect in relation to development of the description to which the application relates.
- 3.9 The Panel has taken into account decisions, where relevant, made by the SoS in other Offshore Wind Farm (OWF) development consent order applications under the PA2008, including important aspects of the Galloper, Triton Knoll and Kentish Flats Extension Orders.

National Policy Statements

- 3.10 The NPSs most relevant to this application are EN-1 'Overarching National Policy Statement for Energy', EN-3 'National Policy Statement for Renewable Energy Infrastructure', and EN-5 'National Policy Statement for Electricity Network Infrastructure' which were designated by the SoS on 19 July 2011 in accordance with s5 of PA2008. They therefore provided the primary basis for the Panel's examination of the application.

Overarching NPS for Energy (EN-1)

- 3.11 This NPS sets out national policy for energy infrastructure, including the role of offshore wind which is expected to provide the largest single contribution towards the 2020 renewable energy targets. Part 4 of EN-1 makes clear that the assessment of applications for energy NSIPs 'should start with a presumption in favour of granting consent' and sets out the assessment principles to be applied. The Panel has applied the tests set out in EN-1 as the primary basis for its examination of the application.
- 3.12 Section 4.2 of NPS EN-1 sets out the policy principles applicable to the use of a 'Rochdale envelope' approach in energy development consenting. It states: *'[w]here some details [of a proposal] are still to be finalised the ES should set out, to the best of the applicant's knowledge, what the maximum extent of the proposed development may be in terms of site and plant specifications, and assess, on that basis, the effects which the project could have to*

ensure that the impacts of the project as it may be constructed have been properly assessed.'

- 3.13 NPS EN-1 (paragraph 5.3.5) summarises the government's biodiversity strategy objectives as follows:

'A halting, and if possible a reversal, of declines in priority habitats and species, with wild species and habitats as part of healthy, functioning ecosystems,' and

'The general acceptance of biodiversity's essential role in enhancing the quality of life, with its conservation becoming a natural consideration in all relevant public, private and non-governmental decisions and policies.'

- 3.14 NPS EN-1 however does go on to suggest that decision makers should consider these objectives in the context of climate change, where, 'failure to address this challenge will result in significant adverse impacts to biodiversity'. This policy direction is relevant to a renewables/low carbon generation project such as the proposal considered in this report. The decision maker is enjoined (paragraphs 5.3.7-5.3.8) to:

'avoid significant harm to biodiversity', whilst ensuring 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'.

- 3.15 Where harm is unavoidable, the NPS (paragraph 5.3.18) suggests that the applicant should include appropriate mitigation, discussed in the following terms:

'during construction, they will seek to ensure that activities will be confined to the minimum areas required for the works;

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;

habitats will, where practicable, be restored after construction works have finished, and

opportunities will be taken to enhance existing habitats and, where practicable, to create new habitats of value within the site ...'

- 3.16 Further aspects of NPS EN-1 are referred to as relevant throughout this report.

NPS for Renewable Energy Infrastructure (EN-3)

- 3.17 This NPS sets out additional policy specific to renewable energy applications, including proposed offshore wind farms with a generating capacity exceeding 100MW. Section 2.6 of EN-3 sets out detailed assessment principles for offshore wind proposals, and these have been applied by the Panel as the primary basis for its examination of the application.
- 3.18 Section 2.6 of NPS EN-3 goes on to consider the implications of the 'Rochdale envelope' approach in the context of renewable energy development. As a matter of policy, NPS EN-3 makes clear that matters such as those set out below may not be able to be specified precisely in an application. Nor is this an exclusive list:
- 'precise location and configuration of turbines and associated development;
 - foundation type;
 - exact turbine tip height;
 - cable type and cable route, and
 - exact locations of offshore and/or onshore substations...'

The NPS provides them as an example, but does not seek to closely prescribe which matters must be precisely assessed and which matters are capable of assessment within a more flexible approach based upon the 'Rochdale envelope'.

- 3.19 NPS EN-3 sets out more detailed considerations relevant to offshore wind farms. In terms of generic impact, NPS EN-3 makes clear that the designation of an area as a Natura 2000 site (a 'European Site') 'does not necessarily restrict the construction or operation of offshore wind farms in or near that area' (paragraph 2.6.69). It makes clear that mitigation should be considered in terms of the careful design of the development itself and of the construction techniques employed. Ecological monitoring is likely to be appropriate, both to enable the better management of the proposal itself and also, given the lack of scientific knowledge, to provide further useful information relevant to the management of future projects.
- 3.20 In terms of impacts on birds, NPS EN-3 policy considerations relevant to this project include (paragraph 2.6.101) effects relating to:
- collisions between birds and rotating blades;
 - bird disturbance due to construction activities;
 - bird displacement during the operational phase, resulting in the loss of foraging areas, and
 - impacts on bird flight-lines and associated increased energy use by birds.

- 3.21 The use of collision risk modelling and policy on the approach to be taken by decision makers to such analysis is considered in full in the NPS. It is a widely used predictive technique in assessing the potential impact of offshore wind farms on birds.
- 3.22 Further aspects of NPS EN-3 are referred to as relevant throughout this report.

NPS for Electricity Networks Infrastructure (EN-5)

- 3.23 This NPS (paragraph 1.8.1 and 1.8.2) sets out policy relevant to electricity transmission (400Kv and 275Kv) and distribution systems from transmission systems to the end user (130Kv to 230Kv). It also covers substations and converter stations. The NPS is therefore relevant to this application insofar as it applies to subsea interconnecting cables, subsea export cables, onshore undergrounded cables and offshore substations.
- 3.24 EN-5 section 2 sets out additional considerations related to the following generic impacts:
- biodiversity and geological conservation;
 - landscape and visual; and
 - noise and vibration.
- 3.25 EN-5 also provides a simplified route map for dealing with electromagnetic fields (EMF), identifying that evidence should be provided that the line complies with the International Commission on Non-Ionizing Radiation Protection (ICNIRP) limits at the nearest residential property.
- 3.26 The above aspects of NPS EN-5 have been taken into account by the panel with regard to the specific elements of the project listed above.

European Requirements and Related UK Regulations

Renewable Energy Directive 2009

- 3.27 The Renewable Energy Directive sets out legally binding targets for Member States with the expectation that by the year 2020, 20% of the European Union's energy mix and 10% of transport energy will be generated from renewable energy sources. The UK's contribution to the 2020 target is that by then, 15% of energy will be from renewable sources. The UK Renewable Energy Strategy 2009 (Renewable Energy Strategy) sets out how the UK proposes to meet the targets.
- 3.28 The targets within the Renewable Energy Directive have been taken into account by the ExA.

Habitats Directive (Council Directive 92/43/EEC)

- 3.29 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive) (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection.

Birds Directive (Council Directive 2009/147/EC)

- 3.30 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring within the European Union. The directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all of the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.
- 3.31 The Birds Directive bans activities that directly threaten birds. It requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds, in particular, to ecological, scientific, and cultural requirements, while taking account of economic and recreational requirements.
- 3.32 The applicant has submitted a No Significant Effects Report with the application, (APP-055) along with Revision B (REP-259) and Revision C (REP-474) which sets out the Habitats Regulation Assessment undertaken with regard to offshore ornithology, providing information for an AA to be undertaken should the SoS deem it necessary Revision B (REP-259) was submitted for deadline II on 15 August 2013. Revision C (REP-474) was submitted for deadline VIII on 12 November 2013.
- 3.33 Paragraphs 1.1.4-1.1.6 of the No Significant Effects Report explains that an assessment has been carried out for the following SPA sites that lie closest to the application site:
- Chichester and Langstone Harbours SPA/Ramsar site;
 - Portsmouth Harbour SPA/Ramsar site;
 - Solent Marshes and Southampton Water SPA;
 - Pagham Harbour SPA/Ramsar site;
 - Dungeness to Pett Level SPA/Ramsar site.

The assessment also includes the following more distant sites with an ecological link to the proposed Rampion OWF site:

- Baie de Seine Occidentale (Iles de Saint Marcouf) SPA;
- Alderney West Coast and the Burhou Islands Ramsar site;

- Archipel des Sept-Iles SPA;
 - Flamborough Head and Bempton Cliffs SPA.
- 3.34 Five bird species were identified as possibly at risk of Likely Significant Effects (LSE), those being; gannet, Brent goose, Mediterranean gull, lesser black-backed gull and common tern. However the applicant concluded that there were no Likely Significant Effects and that an AA was not therefore necessary under the Habitats Regulations.
- 3.35 The applicant provided an update in its Habitats Regulations Assessment Matrices (REP-374) in which, following discussions with SNCBs, the following additional sites were screened:
- Flamborough Head and Bempton Cliffs SPA;
 - Forth Islands SPA;
 - Alde-Ore Estuary SPA/Ramsar.
- 3.36 At the issue specific hearing on 4 December 2013 (HR-072 to HR-76) Natural England (NE) agreed that for the Rampion OWF alone a likely significant effect could be excluded. In respect of sites in UK territories, NE stated that, on the basis of the information submitted at the time of the hearing, a likely significant in combination effect could be excluded for all impacts, sites and features with the exception of:
- collision mortality in respect of gannet at Flamborough Head and Bempton Cliffs SPA and
 - collision mortality in respect of kittiwake at Flamborough Head and Bempton Cliffs SPA.

Conservation and Species Regulations 2010 (as amended) - the Habitats Regulations

- 3.37 The Conservation of Habitats and Species Regulations 2010 apply in the terrestrial environment and in territorial waters out to 12nm from the coast. The EU Habitats and Wild Birds Directives are transposed in UK offshore waters by separate regulations – The Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007 (as amended).

Conservation of Habitats and Species (Amendment) Regulations 2012

- 3.38 The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012. These Regulations amend the Habitats Regulations. They place new duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions of Directive 92/43/EEC (the Habitats Directive)

and Directive 2009/147/EC (the Wild Birds Directive) are transposed clearly.

Offshore Marine Conservation (Natural Habitats, etc.) Regulations 2007 (as amended) (the 2007 Offshore Regulations)

- 3.39 The Offshore Marine Conservation (Natural Habitats, etc.) Regulations 2007 (as amended) transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) and Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive) into national law. These regulations apply to the UK's offshore marine area which covers waters beyond 12nm within British Fishery Limits and to the seabed within the UK Continental Shelf Designated Area. The Habitats Regulations form the legal basis for the implementation of the Habitats Directive and Birds Directive in terrestrial areas of the UK and territorial waters out to 12nm.
- 3.40 The Offshore Habitats Regulations fulfil the UK's duty to comply with European law beyond inshore waters and ensure that activities regulated by the UK that have an effect on important species and habitats in the offshore marine environment can be managed. Under the Regulations, any competent authority has a general duty, in the exercise of any of their functions, to have regard to the EU Habitats and Wild Birds Directives.

Offshore Marine Conservation (Natural Habitats etc .) (Amendment) Regulations 2012

- 3.41 The Offshore Marine Conservation (Natural Habitats, etc.) (Amendment) Regulations 2012 came into force on 16 August 2012.
- 3.42 The Offshore Marine Conservation (Natural Habitats, etc.) (Amendment) Regulations 2012 amend the 2007 Offshore Regulations. They place duties on competent authorities, in relation to the offshore marine area, to take steps to meet the objective of preserving, maintaining and re-establishing habitat for wild birds, and to use all reasonable endeavours to avoid any pollution or deterioration of habitats for wild birds. They also impose a statutory duty upon the SoS to take such steps to encourage research and scientific work relating to the offshore marine area as the SoS considers necessary for the purpose of the protection, management and use of wild bird populations.

European Marine Strategy Framework Directive

3.43 The Marine Strategy Framework Directive¹ (MSFD) forms the environmental pillar of the Integrated European Marine Policy, which aims to provide a coherent legislative framework for the joined-up governance of the marine environment. It sets a primary aim of achieving 'good environmental status' of European Seas by 2020.

3.44 The MSFD is transposed into UK legislation through the Marine Strategy Regulations 2010. Key requirements of the legislation are the:

'establishment of a monitoring programme to measure progress toward Good Environmental Status (as defined by 11 high level descriptors) by July 2014 and;

establishment of a programme of measures for achieving Good Environmental Status by 2016.'

3.45 The Panel has therefore had regard to the MSFD in its examination of the application.

Marine and Coastal Access Act 2009

UK Marine Policy Statement

3.46 The UK Marine Policy Statement (MPS) was prepared and adopted for the purposes of s44 of the Marine and Coastal Access Act 2009 and was published on 18 March 2011 by all the UK administrations as part of a new system of marine planning being introduced across UK seas.

3.47 The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment. It contributes to the achievement of sustainable development in the UK marine area. The UK marine area includes the territorial seas and offshore area adjacent to the UK, which includes the area of sea designated as the UK Exclusive Economic Zone (the Renewable Energy Zone until the Exclusive Economic Zone comes into force) and the UK sector of the continental shelf. It includes any area submerged by seawater at mean high water spring tide, as well as the tidal extent (at mean high water spring tide) of rivers, estuaries and creeks.²

3.48 The MPS is the framework for marine planning systems within the UK. It provides the high level policy context, within which national and sub-national Marine Plans will be developed, implemented, monitored and amended and will ensure appropriate consistency in

¹ Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy

² see Marine and Coastal Access Act 2009 s.42(3) and (4)

marine planning across the UK marine area. The MPS also sets the direction for marine licensing and other relevant authorisation systems.

- 3.49 The MPS has provided the overarching policy context for the Panel's consideration of the application offshore works and Deemed Marine Licence (DML).

South Inshore and South Offshore Marine Plans

- 3.50 The proposed development area is within the designated South Inshore and South Offshore Marine Plan areas. At the time this report and recommendation are made these plans are at an early (stakeholder engagement) stage in the preparation process and no draft has been released. Therefore it has not been possible to take the South Inshore and South Offshore Plans into account.

The National Parks and Access to the Countryside Act 1949

- 3.51 The Act provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty (AONBs). It also establishes powers to declare National Nature Reserves, to notify Sites of Special Scientific Interest (SSSIs) and, for local authorities, to establish Local Nature Reserves.

- 3.52 A National Park and/or AONB have statutory protection in order to conserve and enhance the natural beauty of its landscape. National Parks and /or AONBs are designated for their landscape qualities. The purpose of designating a National Park and/or AONB is to conserve and enhance their natural beauty; including landform, geology, plants, animals, landscape features and the rich pattern of human settlement over the ages.

- 3.53 Section 5 of the Act requires that -

'(1) The provisions of this Part of this Act shall have effect for the purpose—

(a) of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and

(b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.'

- 3.54 Following the Sandford Committee's Review of National Parks, s.11A (2) of the Act, an amendment in the Environment Act 1995, now requires that -

'In exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall have regard to the purposes specified in subsection (1) of section five of this Act and, if it appears that there is a conflict between those

purposes, shall 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.'

- 3.55 In relation to the application it is noted that part of the onshore cable route falls within the boundaries of the South Downs National Park. The SDNPA is the statutory planning authority for the National Park area.
- 3.56 'The Seascape, Landscape and Visual Impact' Section of the applicant's ES (APP-069) has assessed the visual, visual amenity and seascape / landscape impacts of the wind farm, which is located approximately 13km off the coast at its nearest landward point at Worthing. This has concluded that the turbines have the potential to generate:
- major visual effects on the character context of the elevated and coastline extents of the designated assets of the South Downs National Park and Sussex Heritage Coast;
 - major to moderate effects on landscape character along coastal edges of the South Coast Plain and within elevated sections of South Downs Character Areas.
- 3.57 The seascape, landscape and visual effects are considered in detail in chapter 4 of this report.

The Wildlife and Countryside Act 1981 (as amended)

- 3.58 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England, Natural England). The Act also contains measures for the protection and management of SSSIs.
- 3.59 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV on miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species licence will be required from Natural England.
- 3.60 This has relevance to consideration of impacts on SSSIs and on protected species and habitats.
- 3.61 The 'Terrestrial Ecology' Section of the applicant's ES provides a list of statutory designated sites at para 24.4.10 (APP-081). It lists SSSIs that are located within 5km of the proposed development.
- 3.62 The impact on SSSIs and protected species and habitats is considered in detail in chapter 4 of this report.

The Countryside and Rights of Way Act 2000

- 3.63 The Countryside and Rights of Way Act brought in new measures to further protect AONBs, with new duties for the boards set up to look after AONBs. These included meeting the demands of recreation, without compromising the original reasons for designation, and safeguarding rural industries and local communities.
- 3.64 The role of local authorities was clarified, to include the preparation of management plans to set out how they will manage the AONB asset. There was also a new duty for all public bodies to have regard to the purposes of AONBs. The Act also brought in improved provisions for the protection and management of SSSIs.
- 3.65 This is relevant to the examination of effects on, and mitigation in relation to, impacts on High Weald AONB, which the applicant lists in the 'Terrestrial Ecology' Section of the ES (APP-081), as affected by the proposed development. The impacts on the AONB will be further considered under landscape and visual effects in chapter 4 of this report.

Natural Environment and Rural Communities Act 2006

- 3.66 The Natural Environment and Rural Communities Act (NERC) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions have regard, so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this, regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.
- 3.67 This is of relevance to biodiversity, biological environment and ecology and landscape matters in the proposed development. These matters are discussed in chapter 4 of this report.

Transboundary Effects

- 3.68 The application was first screened under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA Regulations) by the Secretary of State on 22 April 2013 and a Transboundary Screening Matrix was published (PD-035). This screening exercise concluded that the proposed development is likely to have a significant effect on the environment of another European Economic Area (EEA) State with regard to France and effects on Archipel des Sept-Iles SPA and Baie de Seine Occidentale (Iles de Saint Marcouf) SPA.
- 3.69 Following the first screening and the conclusion on a precautionary basis that the development was likely to have a significant effect on the environment in another EEA State, in accordance with the

EIA Regulations a legal notice was placed in the London Gazette on 3 May 2013 (PD-034). Notification letters were also sent to the relevant bodies in France. No replies were received.

- 3.70 Under the Secretary of State's ongoing duty under Regulation 24, and following updated and new information submitted to the examination, the application was re-screened on 27 November 2013 and a Transboundary Re-screening Matrix published (PD-035). The conclusion of the re-screening was that the proposed development is not likely to have a significant effect on the environment of another EEA state. An informal letter was sent to the relevant bodies in France on 18 December 2013. There was no response to this letter.
- 3.71 On the basis of the information available from the applicant, the Panel is not of the view that the proposed development is likely to have significant effects on the environment in another EEA State.
- 3.72 In reaching this view, the Panel has applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 Transboundary Impacts Consultation).
- 3.73 The Panel has had regard to the ongoing duty to have regard to transboundary matters throughout the examination and is satisfied that, with regard to Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, all transboundary biodiversity matters have been addressed and there are no matters outstanding that would argue against the Order being confirmed.
- 3.74 The Alderney West Coast and the Burhou Islands Ramsar in the Channel Islands was considered in the applicant's NSER Revision C (REP-474) following NE's opinion that there may be potential links to more distant SPAs from the project.
- 3.75 On examination, we were informed by NE (REP-581) that the Channel Islands are a Crown Dependency and therefore are not covered by UK Environmental legislation or Directives as they are not part of the European Union.
- 3.76 The Channel Islands are part of the UK for the purpose of the Espoo Convention. The Espoo Convention requires parties either individually or jointly to take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.
- 3.77 The Channel Islands are also part of the UK for the purpose of the Ramsar Convention on Wetlands 1971 (as amended in 1982 & 1987) and the Alderney West Coast and the Burhou Islands Ramsar site has been designated in accordance with the Convention. The aim of the convention is to promote the conservation of wetlands and waterfowl. In light of these obligations the Panel considered it appropriate to consult with the

States of Guernsey as they have the responsibility for providing advice and managing the Ramsar site.

- 3.78 As there is currently no clear guidance available from the Government regarding the context in which this site should be considered nor the level of information required, therefore the Guernsey site has been considered under transboundary matters in this report.
- 3.79 The Panel wrote to The Environment Department in Guernsey (PD-021) on 22 November 2013 identifying the Rampion project as being of possible relevance to the States of Guernsey. We wrote again on 20 December 2013 (PD-023) as no reply had been received. A response was received (PD-027) on 23 December stating that the States did not wish to take up the offer of becoming involved in the examination.
- 3.80 On the basis of the information from the applicant (APP-068), the Panel is not of the view that the proposed development is likely to have significant effects on the environment in Guernsey.
- 3.81 The response from the Environment Department in Guernsey (PD-027) showed no evidence that it had any concerns as to the effects of the Rampion Project on the sites located within the States.

United Nations Environment Programme Convention on Biological Diversity 1992

- 3.82 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the Panel has had regard to this Convention and in particular to Article 14 in its consideration of the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation.

Local Impact Report(s)

- 3.83 There is a requirement under s60(2) of PA2008 to give notice in writing to each local authority falling under s56A, inviting them to submit Local Impact Reports (LIRs). This notice was given in the Rule 8 letter on 25 July 2013 (PD-005).
- 3.84 LIRs have been submitted by Brighton and Hove City Council (REP-225), the SDNPA (REP-226) and a joint LIR between West Sussex County Council, Horsham District Council, Mid Sussex District Council and Adur District Council and Worthing Borough Council (REP-227).
- 3.85 Brighton and Hove City Council highlighted some potential positive impacts of the proposed Rampion scheme including environmental and economic impacts. The Council also identified negative impacts such as noise, construction impacts and effects on tourism and the community.

3.86 The Joint Councils have considered a wide range of issues including:

- Noise and Vibration;
- Air Quality;
- Surface Water Hydrology and Flood Risk;
- Socio-Economic Impacts;
- Ecology;
- Archaeology and Cultural Heritage;
- Landscape and Visual Impact and
- Transport.

3.87 The South Downs National Park Authority (SDNPA) was primarily concerned with conservation and enhancement of the landscape character of the designations of the National Park, temporary impacts upon access and wider implications for the image of the National Park.

3.88 The LIRs are considered at chapter 4 of this report.

The Development Plan and Local Policy

3.89 The applicant's 'Planning Policy' Section of the ES (APP-061) sets out its consideration of the relevant local plan policy. It has identified the following local plans as relevant to the consideration of the proposed development:

- Worthing Local Plan (2003);
- Worthing Core Strategy (2011);
- Adur District Local Plan (1996);
- Emerging Adur Local Plan;
- Horsham Core Strategy;
- Horsham General Development Control Policies;
- Mid-Sussex Local Plan;
- Revised Draft Mid-Sussex District Plan and
- South Downs National Park Authority Local Development Framework.

3.90 It should also be noted that Brighton and Hove City Council identified in its LIR that the Brighton & Hove Local Plan 2005 and the emerging Brighton & Hove City Plan Part 1 are both relevant to the consideration of the application.

3.91 Para 4.1.5 of NPS EN-1 indicates that the decision maker may consider Development Plan Documents (DPDs) or other documents in the Local Development Framework (LDF) both important and relevant to his consideration of the application.

National Planning Policy Framework

3.92 On 27 March 2012 a final approved National Planning Policy Framework (NPPF) was published. The NPPF replaced a number of

policy documents including Planning Policy Guidance (PPG) and Planning Policy Statements (PPS).

- 3.93 The NPPF does not contain policies specific to NSIPs, but does set out that NSIPs should be determined in accordance with the PA2008 and relevant NPS. The NPPF, however, may be considered as a matter both important and relevant to the application, as set out in NPPF paragraph 3. Several core principles are set out in the NPPF, including the importance of sustainable growth and development, and of preserving the natural and built environment.
- 3.94 The National Planning Policy Guidance (NPPG) was published on 6 March 2014 and cancels and replaces various circulars and guidance documents. The publication of the NPPG occurred after the close of the examination and therefore the parties will not have had the opportunity to comment on the final version, however the NPPG is capable of being a material consideration which the SoS may wish to take into account. The following cancelled documents which have now been replaced by the NPPG were of particular relevance to this examination:
- Planning for Biodiversity & Geological Conservation: A guide to good practice (2006);
 - Circular 02/99 – Environmental Impact Assessment and
 - Circular 11/95 – Use of conditions in planning permissions³.

OTHER LEGAL AND POLICY PROVISIONS

National policy

- 3.95 Other relevant Government policy has been taken into account by the Panel, including:
- Energy White Paper: Meeting the Challenge (May 2007);
 - UK Low Carbon Transition Plan;
 - National Strategy for Climate and Energy (July 2009);
 - UK Renewable Energy Strategy (July 2009);
 - Planning our electric future: a White Paper for secure, affordable and low carbon electricity (July 2011);
 - Circular 11/95: The Use of Conditions in Planning Permissions (as referred to in paragraph 4.1.7 of NPS-EN1);
 - The National Infrastructure Plan 2011;
 - The National Infrastructure Plan update 2012, and
 - The National Infrastructure Plan 2013.

³ With the exception that Appendix 1, listing model conditions, has not been cancelled

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

INTRODUCTION

- 4.1 The Panel's findings and conclusions on the main matters raised by interested parties (IPs) and by the Panel are set out in chapters 4-6 of this report.
- 4.2 The Panel has had regard to all representations made, our legal responsibilities as a Panel and Examining authority, the relevant designated National Policy Statements (NPSs) and Marine Policy Statement (MPS), and the Local Impact Reports (LIRs) submitted by Joint Councils⁴, Brighton and Hove City Council (BHCC) and the South Downs National Park Authority (SDNPA). We have also had regard to the completed s106 (Town and Country Planning Act 1990(as amended)) development consent obligation with West Sussex County Council (WSSCC). We have had regard to the draft s106 submitted by the SDNPA and the proposed Unilateral Undertaking (UU) submitted by the applicant with regard to the SDNPA, and all Statements of Common Ground (SoCG).
- 4.3 The Panel has considered all the application documents, including the Environmental Statement (ES), supporting information and representations which are important and relevant.

Preliminary Identification of Principal Issues

- 4.4 The Panel's initial assessment of principal issues was prepared in accordance with s88 of PA2008 and Rule 5 of the Infrastructure Planning (Examining Procedure) Rules 2010 (EPR). It was published with the letter inviting all interested parties to the Preliminary meeting (PD-004). The principal issues identified were:
- Biodiversity, biological environment and ecology;
 - Compulsory acquisition;
 - Development Consent Order (DCO) and Deemed Marine Licence (DML);
 - Effects during construction and operation;
 - Landscape/seascape, visual and heritage;
 - Marine and coastal physical processes;
 - Navigation and risk;
 - Socio-economic and
 - Transport and traffic.
- 4.5 The matters set out above are listed in alphabetical order. No weight or importance should be attached to the order in which they are considered in this chapter. Compulsory acquisition

⁴ Local Impact Report was submitted by West Sussex County Council (WSSCC) on behalf of Horsham District Council, Mid Sussex District Council, Adur District Council and Worthing Borough Council.

matters are discussed in chapter 7. The proposed DCO and DML are discussed in chapter 8.

- 4.6 Habitats Regulations Assessment (HRA) was identified as potentially important and relevant to the SoS's decision and is discussed in chapter 5.
- 4.7 In reaching our decision as to the issues to be considered during the examination and in this report, the Panel has also had regard to the legislative framework set by s104 of PA2008 and to policy and guidance set out in relevant designated NPSs, other legislation and published guidance as outlined in chapter 3 above.

Conformity with NPSs and other key plans

General conformity

- 4.8 The Rampion Offshore Wind Farm DCO application was submitted on 1 March 2013 and considered through an Acceptance procedure by the Planning Inspectorate, having regard to the criteria set out in s55 of the PA2008. The project description was considered to meet the threshold for a Nationally Significant Infrastructure Project (NSIP) set out in the Planning Act 2008 (PA2008), together with the other statutory criteria for application acceptance.
- 4.9 Following its examination of the proposal the ExA confirms its view that the project achieves the status of NSIP because the proposed generating capacity of up to 700MW exceeds the relevant threshold of 100MW established by s15 of the PA2008.
- 4.10 The national need for new nationally significant energy infrastructure projects is set out in Part 3 of NPS EN-1 'Overarching National Policy Statement for Energy'. Section 3.3 explains the requirement to provide for energy security, to meet carbon reduction objectives, to replace closing electricity generating capacity and to meet future increases in electricity demand as a matter of urgency. Section 3.7 refers to the need for new electricity network infrastructure: *'Much of the new electricity infrastructure that is needed will be located in places where there is no existing network infrastructure. This is likely to be the case for many wind farms, or where there may be technical reasons why existing network infrastructure is not suitable for connecting the new generation infrastructure.'*
- 4.11 Paragraph 3.4.1 of NPS EN-1 sets out the UK commitments to sourcing 15% of energy from renewable sources by 2020. Paragraph 3.4.4 explains that in order to hit this target, and to largely decarbonise the power sector by 2030, it is necessary to bring forward new renewable electricity generation projects as soon as possible: *'The need for new renewable electricity generation projects is therefore urgent.'*

4.12 Section 2.6 of NPS EN-3 '*National Policy Statement for Renewable Energy Infrastructure*' sets out the specific Government policy in relation to the planning of offshore renewable energy infrastructure projects. Paragraph 2.6.3 confirms that the policy statement refers to '*all elements which may be part of an application, including wind turbines, all types of foundations, onshore and offshore substations, anemometry masts, accommodation platforms and cabling.*'

4.13 The NPS EN-5 '*National Policy Statement for Electricity Networks Infrastructure*' provides the relevant national planning policy context for transmission infrastructure. Paragraph 1.8.1 explains that the NPS addresses:

'transmissions systems (the long distance transfer of electricity through 400kV and 275kV lines), and distribution systems (lower voltage lines from 132kV to 230kV from transmission substations to the end-user) which can either be carried on towers/poles or undergrounded; and

associated infrastructure, e.g. substations (the essential link between generation, transmission, and the distribution systems that also allows circuits to be switched or voltage transformed to a useable level for the consumer) and convertor stations to convert DC power to AC power and vice versa.'

4.14 The electricity transmission infrastructure included within the Rampion OWF DCO application is subject to the PA2008, and therefore covered by NPS EN-5, because it is located in England and constitutes associated development for which consent is sought together with the generating station element of the project.

Conformity with Marine Policy Statement

4.15 The proposed Rampion OWF DCO application includes proposals for large-scale electricity generation infrastructure located in the sea or on or below the seabed. The relevant marine project elements include the proposed turbine array, substations and submarine cabling within the array and between the array and the landfall point.

4.16 In order to be fully authorised these elements of the project, together with a range of associated operations and activities, require consent under the Marine and Coastal Access Act 2009. Accordingly the Rampion DCO application included provision for a DML. The DML was subsequently split into two DMLs during the examination - one for the array and associated array cables and the other for the export cable system extending between the array substation(s) and the landfall point on the shore.

4.17 The Marine Policy Statement (MPS) published in September 2011 provides an important part of the current Government policy

framework under which the DML elements of the DCO application must be considered. The MPS sets out high level marine policy objectives.

- 4.18 In the light of the content of the application and its supporting documentation, together with all the written and oral evidence placed before us during the examination process, the Panel considers that relevant policy principles set out in the MPS have generally been observed in both:
- the process adopted by the applicant and Marine Management Organisation (MMO) during preparation of the application and
 - the substance of the proposals included in the DCO and in the supporting application documents as now presented to the SoS for consideration.
- 4.19 This general finding regarding conformity with the principles of the MPS is subject to a number of qualifications with regard to specific aspects of the proposals including certain aspects of mitigation considered necessary, relevant and important by the Panel. These considerations are reflected in our conclusions and recommendation and are addressed in more detail later in this report, including discussion of the provisions of the DML.
- 4.20 The MPS also sets out the wider policy framework within which Marine Plans and Marine Conservation Zones (MCZs) are to be brought forward. No Marine Plan for the relevant sea area was available for consideration by the Panel before the close of the examination. The Kingsmere MCZ was designated during the examination. The edge of that MCZ lies relatively close to the proposed Order Limits. The likely effects of the proposed project in relation to the MCZ have been fully considered during the examination and are discussed further in this chapter.

Appropriateness and necessity of any planning obligations with local planning authorities (LPAs)

- 4.21 Paragraph 4.1.8 of NPS EN-1 indicates that the decision maker may take into account any development consent obligations that an applicant agrees with local authorities on the basis that they *'must be relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects'*.
- 4.22 The applicant has submitted two documents that require consideration in relation to this policy provision:
- a development consent obligation in the form of an agreement concluded under s174 of the PA2008 (which

engages s106 of the Town and Country Planning Act 1990) with WSCC and

- a development consent obligation in the form of a Unilateral Undertaking (UU) made under the same legislation in favour of the SDNPA.

Planning Obligation with WSCC

- 4.23 The s106 agreement was signed between the applicant, WSCC and the Trustees of the BD Harris Farm Trust (the landowner) on 7th January 2014 (REP-621).
- 4.24 In summary, the s106 agreement makes a number of provisions, contingent upon consent and implementation of the proposed DCO. The developer is to pay WSCC specified sums for the purposes of mitigation measures that would be required as a consequence of the proposed Order should it be made. The agreement also provides for the developer to pay for monitoring the effects of the Rampion project upon specified areas outside the National Park.
- 4.25 Specifically, Schedule 1 of the agreement provides for a mitigation fund of up to £80,220 and a monitoring fund of £20,160. The mitigation fund includes two elements - up to £30,720 for hedgerow enhancement within a specified area and up to £49,500 for public rights of way enhancement within a specified area.
- 4.26 In order to give effect to the terms of the agreement, the developer is required to notify WSCC prior to or upon implementation and of the date of completion of commissioning. At Schedule 2, the Council covenants to use the mitigation fund for:
- hedgerow enhancements outside the boundaries of the National Park within a 5km buffer of the Construction Works to benefit connectivity of ecological networks and offset impacts caused by temporary removal of hedgerows during the cable installation works; and
 - enhancement of existing public rights of way (PRoW) directly crossed by or within a 1km buffer of the Connection Works, to offset any temporary inconvenience, disturbance or loss of enjoyment associated with the construction of the Connection Works. Specific works are to include improved surfacing, signage and access.
- 4.27 The Council also covenants in Schedule 2 to use the Monitoring Fund to produce an annual monitoring report of the planting and reinstatement associated with the Connection Works (outside the boundaries of the National Park) for a period of 10 years following completion of Commissioning.
- 4.28 The Panel notes that the s106 agreement does not contain provisions in relation to any other aspect of the proposals.

- 4.29 Having regard to the information and findings considered in relation to landscape, biodiversity and ecological matters and to considerations of safe pedestrian access and access to the countryside discussed in this report, the Panel considers that the terms of this agreement are relevant to planning, necessary to make the proposed development acceptable in planning terms and directly related to the proposed development. It is noted that the level of funding committed under the agreement (£80,220 for the mitigation fund and £20,160 for the monitoring fund) is accepted and not disputed by WSCC. The applicant and WSCC have agreed the basis for the calculation of the sums involved.
- 4.30 Having regard to that point, and in the absence of any other evidence to the contrary, the Panel finds that the funding contributions proposed are fairly and reasonably related in scale and kind to the proposed development. On the basis of the information and submissions before us, we see no reason to doubt that the agreement is reasonable in all other respects. The need for the mitigation is discussed further in the sections on landscape and biodiversity later in this chapter.

Planning obligation with the South Downs National Park Authority

- 4.31 Meetings were held between the applicant and the SDNPA during the examination period and requests were made by the Panel for updates regarding progress. However, by the close of the examination no agreement was reached in relation to mitigation and monitoring between the applicant and the SDNPA, although drafts of a potential s106 were submitted to the Panel at different stages of the examination by the applicant and the SDNPA (REP-461, REP-551). In the closing stages of the examination, the applicant submitted a Unilateral Undertaking (UU) in favour of the SDNPA, the terms of which are contested by the SDNPA (REP-622).

(a) Contents of the applicant's Unilateral Undertaking

- 4.32 The UU offered by the applicant provides for the funding of specified mitigation and monitoring measures in respect of the adverse effects of the proposed Rampion development upon the National Park - a mitigation fund of £242,500 and a monitoring fund of £116,000.
- 4.33 As with the s106 agreement with WSCC, the UU would be conditional upon the making of the Order and also upon implementation of the substantive parts of the project falling within the National Park boundaries.
- 4.34 The UU provides that the Monitoring Fund would be conditional upon completion by the SDNPA, applicant and landowner of a Deed or Confirmatory Agreement - attached at Appendix 1 of the UU. Schedule 2 of the UU contains reference to a Purpose Trust for

those elements of the obligation not contingent on the confirmatory agreement.

4.35 Unlike the s106 with WSCC, the UU does not specifically reference offsetting measures, although Schedule 2 does set out the four areas where the Mitigation Fund is to be used. These areas are:

- to enhance the natural beauty, wildlife and cultural heritage of the National Park;
- to promote opportunities for public enjoyment and understanding of the National Park through tourism and the relationship of the National Park with the Development within 5km of the section of cable route which runs through the National Park;
- for improvement of the conservation and management of chalk grassland in accordance with the South Downs Way Ahead Nature Improvement Area objective and
- for additional enhancement measures related to the nature of the likely impacts of the development.

(b) *The SDNPA's response to the Unilateral Undertaking*

4.36 In responding to the UU proposed by the applicant, the SDNPA raised various legal issues. These issues and the applicant's response are referenced in the footnote below.⁵ The main thrust of the SDNPA's response (REP-589) was to argue that the obligation *'includes a scope and value of works well below the requisite level to either mitigate the harmful impact upon the National Park or to enhance it'*.

4.37 In so far as the proposed mitigation fund is concerned, the SDNPA argued that the scope of mitigation was not agreed and that it should include mitigation of impacts additional to those upon chalk grassland, eg impacts upon the heritage coast. The SDNPA also objected to the restatement of provisions (and addition of provisions) relating to the Mitigation Fund, through a confirmatory agreement, on the basis that requirement of a confirmatory agreement is unreasonable when the SDNPA objects to the position that is being taken and unnecessary if the UU is accepted.

4.38 In relation to proposals for monitoring in the UU, in addition to their view that the Monitoring Fund is insufficient to undertake the monitoring proposed by the applicant, the SDNPA was also of the opinion that given the nature of that part of the development that crosses a protected landscape, monitoring is required to ensure compliance against the requirements in the DCO and to evaluate the success of required mitigation. The SDNPA argued that the Fund is directly related to the development and is a reasonable requirement for a development of the nature proposed.

⁵ See Appendix A of REP-589 for the detail of the legal issues raised by the SDNPA and REP-642 for the applicants response to those legal issues

- 4.39 Throughout the examination, a key and consistent feature of the debate regarding mitigation and monitoring contributions (as now set out in the UU) was that the SDNPA regarded its scope as too limited and the sums to be provided through any proposed undertaking inadequate in relation to the scale of the likely effects of the project upon the National Park, its use and enjoyment.
- 4.40 Accordingly the SDNPA prepared and submitted to the examination a proposed 'Mitigation and Enhancement Strategy' that in its view would need to be implemented to mitigate the harm of the proposed development. This argument was made without prejudice to the SDNPA's overall concern that the proposal would have an unacceptable and irreversible impact upon the Heritage Coast and landscape character of the National Park.
- 4.41 The SDNPA produced a breakdown of works required for the mitigation and enhancement obligation (REP-551), emphasising that the scope proposed was driven by the need to mitigate and enhance the National Park by means of offsetting adverse effects that could not be addressed in any other fashion. The breakdown information identified the amount of work required to mitigate and enhance the National Park by considering the degree of harm proposed during the development process. The SDNPA methodology identified the costs of the human resources (daily rates for relevant officer and contractors, together with management overhead), and equipment (seed harvesters, posts, aggregate etc). Using known costs of comparable recent work the SDNPA produced 23 separate types of mitigation and enhancement works, to be conducted over a ten year period.
- 4.42 £2 million was attributed to enhancement works including chalk grassland, stream habitats, scrubland, hedgerows, orchid populations, ecological networks, dormouse and bird conservation, landscape enhancement, land manager advice, various educational and visitor interpretation sites, dedicated Heritage Coast and South Downs Way enhancement, various visitor access and sustainability improvements, improvements to the South Downs Way and public rights of way and online archaeological resources. In addition the SDNPA provided for a £0.5m monitoring function, comprising of five sets of works including monitoring the long term restoration of chalk grassland, the reinstatement of excavated land, preparation of monitoring reports, applicant meetings, and information to National Park users regarding revised access arrangements.
- 4.43 Although the SDNPA revised down the overall costs involved in mitigation, enhancement and monitoring between their August 2013 and December 2013 submissions (REP-331 and REP-551), the SDNPA remained of the view that the scope of mitigation and costs involved were of a different order of magnitude to that proposed by the applicant in its final undertaking (REP-589).

4.44 As a result of its concerns regarding the substance and content of the UU, its view regarding the limited extent to which the effects of the project upon the National Park could be mitigated and monitored and its view of the very limited extent to which the National Park could be enhanced with the funds provided through the undertaking, the SDNPA objected to the application. The SDNPA (REP-589) seeks the application's refusal by the SoS upon five key grounds⁶ including that 'the proposal does not include a s106 agreement of appropriate scope or value to either acceptably mitigate the above impacts or enhance the National Park'

(c) *Applicant's response to the SDNPA's comments upon the Unilateral Undertaking*

4.45 The applicant argued that the SDNPA was making 'excessive' demands both in relation to the scope of the financial contributions sought and in relation to the level of those contributions. It held that the cases in both regards were inadequately justified. In November 2013, the applicant prepared an explanatory note in relation to a draft s106 agreement under discussion with the SDNPA (REP-461). This note sets out how the calculations that underpinned what it considered to be an appropriate level of funding for mitigation, enhancement and monitoring in the National Park had been derived.

4.46 The note emphasised that the proposed undergrounding of the export cables amounts to important mitigation in its own right. The applicant suggested that the undergrounding operation would be ten times more expensive than the erection of overhead electricity transmission cables. The applicant also referred to additional engineering costs of £180,000 for specialist equipment and bog matting to be used at Tottington Mount, and £150,000 for using techniques to limit surface vegetation and topsoil removal from Tottington Mount. These the applicant stressed would all be outside any proposed obligation.

4.47 As the same level of funding was subsequently included in the final UU (REP-642) the Panel considers it helpful to revisit the substance of the explanatory note although the Panel recognises that the applicant's submitted draft s106 document was not finally agreed. The Explanatory Note explained that the proposed measures encompassed wider area chalk grassland mitigation (citing a Environment Bank figures for the potential generation of biodiversity, concluding that the 2 hectares of land directly affected by the cabling would need to be offset by investing £132,500 into 5.3 hectares) plus amounts of £35,000 and £75,000

⁶ The SDNPA set out 'five key overriding concerns' in its letter requesting refusal of the proposed development including the impact of the wind turbines upon the Sussex Heritage Coast and National Park; the detrimental and unacceptable impact of the cable corridor and associated construction works on the landscape character of the National Park and to the enjoyment of users of the National Park and local tourist economy and that there was no s106 of appropriate scope or value to acceptably mitigate the impacts or enhance the National Park (REP-589).

for biodiversity enhancements, accessibility improvements and investment in public information. Funding for construction monitoring measures were also included in the draft s106 agreement offered, allocating £116,000 based on salary assumptions together with a ten year monitoring programme.

- 4.48 The Panel notes that the SDNPA maintained its position of disagreement with the applicant over scope and scale of the proposed obligation.

(d) *NE's position in relation to the Unilateral Undertaking*

- 4.49 The Panel asked NE for its advice in respect of the appropriate level of mitigation, enhancement and monitoring measures to be secured via a planning obligation. NE's response confirmed its role as advisor to Government on landscape and conservation issues including those which extend into National Parks. However it deferred to the SDNPA in relation to planning obligations and the nature of expenditure it considered might be involved to secure the appropriate level of environmental protection for the National Park.

- 4.50 NE also confirmed that, in its view, the SDNPA had provided appropriate reasoning in its 'Rampion Offshore Wind Farm Mitigation and Enhancement Strategy' regarding why it was the most appropriate body to advise on and oversee the detailed measures to be secured via planning obligation documents. NE concluded that the SoS should have regard to the SDNPA's view regarding these matters for the purposes of discharging his duty under section 11A(2) of the National Parks and Access to the Countryside Act 1949 and in assessing the relevant NPS policies (REP-630).

(e) *Panel's observations and conclusions*

- 4.51 The Panel noted that at different times throughout the examination, the SDNPA and Natural England acknowledged that although the effects of the proposals on the National Park and Heritage Coast would still be 'major/major moderate' adverse, these adverse effects could potentially be moderated through offset and enhancement measures. Having regard to the content of the ES and to relevant evidence submitted over the course of the examination, including submissions by the applicant, the SDNPA, Natural England and the relevant local authorities (including their Local Impact Reports), the Panel accepts that a substantial element of the residual long-term visual impact of the wind farm array could not be mitigated but that the effects could potentially be moderated by investment in offsetting measures.

- 4.52 The Panel placed great importance upon the SDNPA and the applicant reaching an agreed position in respect of mitigation measures to be included in a legal obligation. The applicant and

the SDNPA were therefore encouraged to reach agreement regarding the issues discussed above many times during the examination. It was evident to the Panel that there was little prospect of agreement being reached between the parties and the examination closed without agreement in place.

- 4.53 The Panel has considered relevant policy. Paragraph 5.9.12 of NPS EN-1 confirms that, in relation to projects proposed in locations **outside** a National Park that might affect it, not only should projects be designed sensitively but that *the aim should be to avoid compromising the purposes of [National Park] designation*. The Panel gives substantial weight to conservation of the natural beauty of the landscape and countryside within the National Park. Our assessment of the application includes careful consideration of the ES landscape and visual impact assessment, a number of site visits and a range of relevant evidence submitted during the proceedings, including submissions from the applicant, NE and the SDNPA. It is apparent to the Panel that only limited mitigation options are likely to be available to address the landscape and visual effects of the turbine array upon the National Park. The applicant's ES recognises these effects as significant and adverse when considered from a number of viewpoints within the South Downs National Park.
- 4.54 Notwithstanding that point, Paragraph 5.9.13 of NPS EN-1 is very clear 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'*. This policy would apply only to the proposed offshore turbine array and offshore substations, whose visual impacts would last while those structures were in place. The Panel concludes that the project should not be refused consent merely on the basis of the likely significant adverse landscape and visual impact of those parts of the development proposed to be located outside the boundaries of the National Park but visible from within it, including the OWF turbine array and offshore substations.
- 4.55 From the information gained during the Panel's site visits and inspections and from consideration of the ES, an adequate level of offsetting and/or enhancement of landscape and ecological features is unlikely to be achieved merely by landscape enhancements in the areas immediately surrounding the viewpoints, because opportunities for enhancement may be constrained by a range of physical and other factors such as the need to maintain specific open areas, topography and the position of the coastline.
- 4.56 The Panel finds that the only way in which a degree of moderation of that long term residual adverse visual effect upon the nationally designated landscape of the National Park can be achieved, is through compensatory offset and enhancement of other visual and landscape characteristics of the National Park. Taken in isolation, the proposed mitigation of the cable corridor effects within the

National Park would not offset the long term and extensive visual impacts of the project in the western parts of the South Downs National Park.

- 4.57 The Panel therefore finds that a UU or s106 agreement is necessary to secure mitigation in the South Downs National Park to make the development acceptable in planning terms and would be directly related to the development.
- 4.58 Both sets of cost calculations put forward by the applicant and by the SDNPA in the lead up to the submission of the applicant's UU seemed to the Panel, in general terms to be robust within the limitations of the information available for assessment, although the range of costs put forward by the SDNPA were wider in scope than those put forward by the applicant.
- 4.59 Finally, we considered the status of Tottington Mount as Scheduled Ancient Monument and a heritage asset of importance and visitor interest. We noted the specific concerns raised by the SDNPA regarding the potential difficulties associated with the restoration and re-establishment of important areas of chalk grassland, particularly in the Tottington Mount area. In considering the issue of chalk grassland restoration the Panel took into account the potential for failure due to the technical challenges of chalk grassland restoration, which were broadly accepted by the applicant during the examination discussions. We also took account of the significant visual impact of the areas concerned due to their location and specific topographical position within the National Park. These points were also accepted by the applicant and referred to by a number of parties in submissions, including NE.
- 4.60 Following some reflection, the Panel has concluded that the UU provides a minimum level of mitigation and notes that it provides no contingency for the identified risk of restoration and/or mitigation failure.
- 4.61 In relation to the other issues raised in relation to the UU the Panel agrees with the SDNPA that the effect of the 'purpose trust' would appear to go some way beyond what is required by legislation and set out in guidance. The arguments put forward by the applicant in relation to the SDNPA position do not appear to us to address that point directly. However it is noted that a similar approach is incorporated in the s106 agreement with WSCC.
- 4.62 The Panel also accepts that the monitoring regime associated with the implementation of the project should consider monitoring of the delivery and success of any mitigation required to address any harmful effects of the proposed project upon the National Park.
- 4.63 In the light of these findings it therefore appears to the Panel that the UU is less than satisfactory in a number of specific respects

and considerably narrower in scope than that sought by the SDNPA, including with respect to offsetting and enhancement expenditure. Nevertheless, after careful assessment of all the mitigation provided by the recommended Order and UU (including the scope and funding offered in the UU), the Panel does not consider the range of mitigation measures provided by the application, when considered as a whole to be so narrow and inadequate as to justify refusal of the Order.

- 4.64 The adequacy of the measures proposed in the UU must be taken into account and assessed in the context of measures provided for within the application as a whole, as the UU is only part of the picture. In addition to the UU, the Order would provide for the undergrounding of the export cables through the National Park and other mitigation measures including the structures exclusion zone.
- 4.65 Taken together, in the judgement of the Panel, these measures offer an adequate level of mitigation for effects upon the Park. For this reason, considered in the context of the application as a whole, the Panel concludes that the UU is fairly and reasonably related in scale and kind to the development. It would go some way to mitigating the effects on the National Park albeit that it is accepted by the Panel that those effects would not be eliminated or offset in their entirety. The Panel further concludes that, when the mitigation provided by the application as a whole is taken into account, the acknowledged specific deficiencies in the UU are outweighed by the benefits of the scheme and are not so great as to recommend refusal of the application.
- 4.66 The Panel therefore concludes that on balance, taking into account the UU and the mitigation secured in the recommended Order, consent should be granted for the project due to the contribution that the project would make towards meeting the urgent need for renewable low carbon sources of energy.⁷

Financial and technical viability assessment

- 4.67 NPS EN-1 paragraph 4.1.9 requires consideration as to whether the applicant has provided a proper assessment within the application documentation of the financial viability and technical feasibility of the application.
- 4.68 The issues around funding were the subject of discussion during the examination. The consenting strategy adopted by the applicant has left open the options as to whether the applicant would itself develop the proposed project and then transfer the transmission infrastructure to an Offshore Transmission Owner (OFTO) partner or whether it would sell on or lease all or part(s) of the benefit of the Order to enable another developer (or developers) to do so.

⁷ This is discussed in detail in the section on landscape and visual impact.

Under the terms of Article 7 of the proposed DCO any such transfer of benefit would be subject to the consent of the SoS.

- 4.69 In line with this approach, various aspects of the submitted proposals were developed only in very broad outline or in principle, with details reserved for subsequent approval. This provided relatively little detail for the Panel to consider in relation to the several aspects concerned. In response to questioning by the Panel and submissions by other interested parties further information was submitted regarding certain elements of the project during the course of the examination. None of this additional information appeared to the Panel to narrow the range of commercial options left available to the developer within the scope of the proposals before us.
- 4.70 The Panel considers it important and relevant to the examination that the DCO would be transferable to an undertaker other than the applicant and that therefore the identity of the ultimate developer might not be known at this stage. Thus, in addition to testing the availability of funding and resources to implement the project and its mitigation, the Panel also questioned whether adequate safeguards would be in place upon transfer of the undertaking.
- 4.71 Notwithstanding that position, the submitted documentation does provide relevant initial information regarding seabed conditions that might influence foundations and related build costs. The ES also includes a range of information that would have a bearing on the technical viability of implementation. Part way through the DCO/DML examination four applications under s127 of the PA2008 were submitted and examined by an Examining Inspector who is also a member of the Rampion DCO Panel.
- 4.72 Having regard to the content of all the relevant submissions, none of the documentary information and other evidence submitted has raised significant grounds for doubt as to the technical viability of the proposed project with the exception of the grid connection and s127 matters. To address these points, during the examination a formal statement by National Grid was submitted by the applicant (REP-384). This statement provides assurance regarding the availability of an appropriate grid connection.
- 4.73 The s127 issues involving diversion and/or disturbance of statutory services were eventually resolved near the end of the examination when all the representations of the relevant statutory undertakers (including National Grid Electricity Transmission (NGET)) were withdrawn and relevant agreed Protective Provisions included within Schedule 12 of the Order.
- 4.74 The issues of transfer of benefit and of the funding available for project delivery and for meeting statutory obligations (mitigation and compensation for compulsory acquisition and injurious

affection) are addressed at chapter 7 of this report. That section of the report also explains the progression from the initial s127 applications to the Protective Provisions now included within the proposed draft Order.

- 4.75 Having regard to the points discussed above, in the Panel's judgment the information available to the Panel considers that the applicant has properly assess the financial viability and technical feasibility/viability of the proposed development.

Environmental Statement (ES) and Environmental Impact Assessment (EIA)

Adequacy of ES/EIA

- 4.76 NPS EN-1 section 4.2 sets out the considerations to be taken into account in determining the adequacy of the ES accompanying an application for development consent (in this case including two DMLs). Prior to submission the proposal was scoped by the Planning Inspectorate, which issued a Scoping Opinion (APP-176) which was taken into account by the applicant in the preparation of the ES prior to submission of the application.
- 4.77 On submission all the application documents were reviewed within the statutory period available for Acceptance. The information within the ES was considered adequate for Acceptance purposes. During the course of the examination, having considered the submitted information in detail and taken into account submissions from interested parties, the Panel sought a range of additional information, including information regarding ecological and ornithological matters, landscape and visual impacts, highway and pedestrian access, navigation and economic impacts and a number of other matters.
- 4.78 Overall, in the light of both the submitted documentation and the submissions received, the Panel considers that the ES, as supplemented with the additional information secured during the examination, provides an adequate basis for the Environmental Impact Assessment (EIA). In turn we also consider that the various elements of the environmental impact assessment, supplemented by the information received in response to Panel questioning and submissions by interested parties, now form an adequate basis for our report and recommendation and decision making by the SoS.

Consideration of alternatives

- 4.79 NPS EN-1 paragraph 4.4.1 makes it clear that *'the relevance or otherwise to the decision-making process of the existence (or alleged existence) of alternatives to the proposed development is in the first instance a matter of law. The NPS does not contain any*

general requirement to consider alternatives or to establish whether the proposed project represents the best option'. However, as required under the EIA Directive and relevant regulations, the applicant was obliged to include in its ES information regarding the main alternatives studied. Other statutory or policy factors that might potentially require alternatives to be considered could include habitats considerations, biodiversity or geological conservation (EN-1 para 5.3.7), flood risk (in relation to the sequential and exception tests EN-1 paras 5.7.13 and 5.7.16)) and landscape impacts upon a National Park (EN-1 para 5.9.10). Specific issues in relation to habitats and landscape and visual impacts upon the South Downs National Park are considered later in this report.

4.80 The applicant sets out the alternatives considered at section 6.1.3 in the ES (APP-060). Feasibility studies were undertaken between 2008 and 2010 and the results are summarised in section 3 of the ES. This work identified potential electricity grid connections, cable routes, and potential cable landfall locations and considered the constraints applicable. The ES submitted with the application also considers number of different potential layouts for the Rampion array (APP-093).

4.81 Alternatives to elements of the applicant's proposals were raised as follows:

- a suggestion that the applicant should adopt an alternative export cable route that does not require crossing of the South Downs National Park was put forward by the Mr Steve Ankers and the South Downs Society and Campaign for National Parks;
- Twineham Parish Council and a number of local residents registered as IPs put forward an argument that the applicant should adopt one of the alternative substation locations that it had assessed and put forward as its preferred alternative when consulting regarding its ES at the pre-application stage and
- Hove Civic Society and two other IPs made representations and submissions arguing that the electricity transmission arrangements from the Rampion Array to the substation and National Grid connection point at Bolney should be achieved largely through exploitation of spare capacity in transmission infrastructure associated with an existing oil-fired generating station at Shoreham.

4.82 While the Panel acknowledges that the existence of alternatives will only be a relevant material consideration in exceptional circumstances in view of the issues raised in relation to the National Park and potential implications for the grid connection the Panel exercised its discretion as ExA to establish the position in relation to each of these suggested alternatives as far as the scope of the examination allowed. In each case it was apparent that the

applicant had considered the alternatives raised at pre-application stage and had rejected them for a variety of technical and financial reasons. The Panel chose to consider the alternatives raised in a proportionate manner.

- 4.83 It was apparent and subsequently confirmed by the applicant at ISH that, in the case of the choice of cable route in relation to the National Park, financial considerations were a significant factor in the applicant's choice of route. Costs were influenced by constraints posed by the location of urban areas and an SSSI on or close to the coastline. It was also apparent that the case put forward by the South Downs Society was expressed in general rather than specific terms. For example, no specific technically feasible route was identified and demonstrated to be practicable by the Society, although reference was made to the information within the applicant's ES.
- 4.84 In the case of the suggestions by Twineham Parish Council and local residents that an alternative substation site assessed by the applicant should be adopted, it was apparent that the alternative site fell partly outside the 'red line' Order Limits. Therefore, notwithstanding that the applicant had apparently identified a preference for that alternative substation location at pre-application stage, it did not form part of the application before the Panel.
- 4.85 It is important to note in this regard that it is not necessary in law or in order to satisfy relevant policy tests for the applicant to demonstrate that it has selected the best alternative. The scope of judgment available to the Panel is whether the proposal before us could be developed in an acceptable fashion once any mitigation measures have been taken into account. Furthermore, the existence of an alternative would only fall to be considered where the proposed development would have such adverse effects that the possibility of an alternative which would overcome the clear planning objections becomes relevant. This is not the situation in this case.
- 4.86 The third alternative put forward during the examination related to the electricity transmission arrangements associated with the proposed project. This alternative was raised as part of a wider argument that there was no *need* for an export cable route to cross the South Downs National Park, whether or not it was to be placed underground, because adequate capacity is available in the existing sub-regional transmission network to accommodate the loads likely to be generated by the Rampion OWF if consented. The case was argued by a retired qualified transmission engineer, Mr Kapp, representing the Hove Civic Society (REP-286).
- 4.87 There was disagreement between the applicant and the objecting parties regarding the most appropriate technical solution to the project's transmission requirements. The applicant argued for the

dedicated underground cable corridor extending from the array substation(s) to the landfall point and from there in parallel trenches approximately 26.4km across country from the landfall point to the substation and grid connection point at Bolney, in the process crossing a section of the South Downs National Park.

- 4.88 It further argued that the use of the existing transmission network as advocated by the objectors was not practicable or economically viable due to the extent and high costs of offshore cabling that would be required to use the existing network of substations and 132kV overhead lines proposed and that elements of the network would not be able to cope with the peak generating loads of both the existing power station and the proposed project.
- 4.89 The applicant's position was supported by a letter from National Grid Electricity Transmission PLC (REP-384) which highlighted the likely high growth in future demand provided a number of technical observations regarding the capacity of the existing network to accommodate anticipated growth in electricity transmission requirements.
- 4.90 Paragraph 4.4.3 of NPS EN-1 sets a high bar for alternatives put forward by third parties after an application has been made, in that it requires the ExA to place the onus on the person proposing the alternative to provide evidence for its suitability. While Hove Civic Society had submitted a substantial technical argument (albeit those aspects of this submission were challenged by the applicant (REP-254)), no evidence was submitted to demonstrate that the owners and operators of the existing network were prepared to make the capacity available.
- 4.91 In view of the absence of any confirmation of availability from the owners and operators of the current sub-regional network, the Panel cannot regard the alternative advocated as realistic alternative to the transmission arrangements proposed in the application.
- 4.92 The Panel notes that the information contained in the submission from NGET was not challenged by any party. That submission highlighted the need to accommodate the forecast substantial increase in demand for electricity.
- 4.93 NPS EN-1 paragraph 3.3.13 also highlights the need to meet increases in electricity demand, even allowing for energy efficiency improvements. It further suggests that, depending on the choice of how energy is supplied, the total capacity of electricity generation may need to be more than double (and possibly even triple) its present level in order to meet demand and to be robust in all weather conditions. Against that background the need for substantial additional transmission capacity is clear.

- 4.94 Paragraph 2.1.2 of NPS EN-5 'National Policy Statement for Electricity Networks Infrastructure' refers to the information contained in NPS EN-1 regarding the specific need for new major electricity networks infrastructure in Section 3.7 and indicates that the ExA and decision maker should act on the basis that the need for the transmission network infrastructure covered in that NPS (which includes transmission infrastructure associated with nationally significant energy projects) has been demonstrated.
- 4.95 The arguments put forward for consideration of alternatives to various elements of the Rampion project proposal have been examined by the Panel. The alternatives presented raised planning issues of their own and the Panel finds that the alternatives presented would not effectively overcome any clear planning objections to the scheme as applied.
- 4.96 For the reasons set out above we find that none of the three alternatives suggested should be given weight in the assessment of this application.

Mitigation measures

- 4.97 A series of mitigation measures referred to in the ES were proposed in the terms of the submitted draft DCO (including the DML, subsequently split into two DMLs). Following commencement of the examination a number of additional mitigation measures were introduced by the applicant in response to matters highlighted over the course of the proceedings.
- 4.98 In response to a request from the Panel during the examination, the applicant submitted a 'Schedule of mitigation' (REP-268). This schedule set out the mitigation included in the submitted draft Order. Further mitigation measures were included within the draft DCO by the applicant prior to close of the examination. A number of the proposed mitigation measures were developed and refined by the applicant during the examination in response to ExA questions and IPs submissions.
- 4.99 The Panel has carefully considered all the information, including the representations and submissions of all the IPs and the applicant's proposed draft DCO/DML provisions submitted in response to the issues raised during the examination. In the light of its assessment (described in more detail in the various sections of this report), the Panel considers that a limited number of additional mitigation measures are necessary to deal with specific matters arising that have not been fully or adequately addressed by the final draft DCO submitted by the applicant.
- 4.100 The consenting strategy adopted by the applicant involves the reservation of many areas of detail regarding proposed mitigation for subsequent approval. Many areas of mitigation are addressed in the DCO/DMLs through submission of 'outline plans', not all of

which were made available to the Panel by close of examination. This approach presented the Panel with a degree of difficulty in understanding the likely net outcome of the mitigation proposed, for example in terms of the standards, levels, scope and extent of that mitigation. It also appeared to us that this approach ran the risks of dispute as to adequacy and of resultant delay if and when detailed information was submitted to the relevant decision maker(s) for subsequent approval.

4.101 Accordingly, the purpose of the 'Measures of success for discharge of requirements' (REP-619) developed by the relevant parties at the request of the Panel, is intended to establish clarity regarding the main objectives of each of the proposed mitigation measures and how its successful implementation would be measured. The aim is to clarify these points for the benefit of all relevant parties and decision makers, including:

- the Secretary of State for the purposes of his assessment of this application;
- the developer in its pursuit of implementation and
- relevant decision makers responsible for the discharge of requirements and conditions and for their enforcement.

4.102 It should be noted that the schedule is restricted to landward measures because the MMO did not wish specific measures of success for mitigation of marine effects to be specified in this schedule. The MMO considered that this was additional to its expected contribution to DCO examinations and that the MMO was sufficiently experienced to recognise successful mitigation when it saw it. The applicant, NE and relevant local planning authorities took a different view and were content to contribute towards development of the landward elements of the schedule.

4.103 A number of significant changes were made to the DCO and revised versions submitted as the examination progressed, including the splitting of the single DML into two DMLs (one for the 'Array' and offshore substations and one for the marine section of the 'Export Cables'), some relevant and important wording amendments and the addition of a number of mitigation provisions added during the course of the examination. A summary of the evolution of the DCO during the examination and the further mitigation proposed by the Panel can be found in the DCO chapter 8 to this report.

4.104 The Panel considers that all the mitigation requirements and conditions set out in the recommended draft Order are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects. However it should be noted that there was disagreement between certain of the consultation responses submitted by interested parties (IPs) regarding some of the additional mitigation provisions included by the Panel in the final draft Order consulted. The mitigation

requirements inserted by the Panel, the responses to them and implications for the mitigation provisions recommended for inclusion in the Order are discussed in the relevant sections of this report and summarised in Table 8.4 in the discussion of the DCO below.

MAIN ISSUES IN THE EXAMINATION

Key Issues

- 4.105 The key issues are discussed in this section as identified in the Rule 4 and 6 letter (PD-004) and described earlier in this chapter at paragraph 4.4.

Biodiversity, Biological Environment and Ecology

Introduction and policy context

- 4.106 The relevant National Policy Statements (NPSs) are the overarching NPS EN-1: Energy; and EN-3: Renewable Infrastructure. These were considered in chapter 3. The biodiversity and geological conservation matters of importance to this examination are:

- sites and species identified through international conventions and European directives
- the wildlife aspects of National Parks, Sites of Special Scientific Interest (SSSIs)
- species and habitats that receive statutory protection under the Wildlife and Countryside Act⁸ and
- EIA matters.

NE's written representation (REP-297) sets out the legislative and policy framework for all sites and species relevant to this application.

- 4.107 This biodiversity section describes the potential impacts, assessment of the range of biodiversity potentially affected by the proposed development and the mitigation proposed by the applicant and agreed or not with relevant IPs during the examination. Habitats Regulations Assessment (HRA) matters are covered separately in chapter 5 of this report. The content of the remainder of this chapter is organised as follows:

- Terrestrial nature conservation and habitats
- Marine nature conservation and habitats
- Terrestrial ecology (excluding ornithology and HRA)

⁸ Wildlife and Countryside Act 1981

- Marine ecology (excluding ornithology and HRA)
- Terrestrial (non-HRA) ornithology
- Marine (non- HRA) ornithology

Terrestrial nature conservation and habitats

4.108 The applicant's ES Section 24, 'Terrestrial Ecology' (APP-081) sets out the statutory designated sites that are located within 5km of the proposed cable corridor route, which include the South Downs National Park, through which the cable corridor passes, SSSIs, Local Nature Reserves (LNRs) and other non-statutory designated sites.

South Downs National Park (the National Park)

4.109 National Parks are designated for wildlife purposes as well as cultural heritage and beauty. In this section the Panel has regard to its statutory duties relating to biodiversity. Those relating to landscape and visual effects are addressed later in this chapter in the section entitled 'Landscape, seascape and visual impacts'. The habitats affected in the National Park are addressed below under the relevant headings. The applicant's ES (APP-081) states that the National Park is designated for its geological, ecological and landscape value. The extent of the National Park is shown on Figure 24.2 (APP-118).

4.110 The ES (APP-081) predicts the cable corridor would pass through approximately 14km of the National Park. Based on a 40m width working strip (a worst case estimation) the proportion of National Park land affected would amount to 0.035% of the National Park's land area. The ES indicates that as a result of development of the Rampion project direct temporary loss, spanning two to five years, would occur to the following habitats, which form part of the National Park's resource:

- Arable fields (13.6ha approximately)
- One 'important' hedgerow
- Chalk grassland (2.4ha approximately)
- Neutral grassland (1.5ha approximately)
- Marshy grassland (0.8ha approximately)
- Individual mature trees
- One stream (to be crossed in two places)
- One river crossing to be crossed using the Horizontal Directional Drilling (HDD) technique

There would also be direct and indirect impacts to a number of species accommodated within the National Park, namely: badger, bats, reptiles, dormouse, great crested newt, nesting birds, invertebrates and fish species from water bodies in the Park. The impact of habitat and species lost was assessed as significant and negative at the district level.

- 4.111 The SDNPA (REP-226, REP-300, REP-331) expressed concerns regarding the level of confidence with which the ecological adverse impacts could be assessed because of the imprecise nature of the proposal regarding cable route, easement widths, temporary compound locations and haul roads. WSCC raised similar concerns (REP-335). In response to the Panel's first round of written questions, the SDNPA stated that it did not consider any of the effects upon terrestrial ecology would be so significant and adverse as to warrant rejection on those grounds alone (REP-331). The SDNPA did raise specifically here and in all its other representations consistent concerns regarding mitigation of the impacts on the priority habitat of chalk grassland (discussed later in this section). It was also unconvinced regarding the practicability, sustainability and likely effectiveness of the enhancement approaches and landscape-scale ecological networks that would be implemented under the applicant's proposals (REP-331).
- 4.112 During the examination the Panel was kept informed of discussions between the applicant and the SDNPA regarding a proposed s106 agreement in relation to the resourcing of mitigation and monitoring in the National Park. Agreement was not reached between the parties; and at the close of the examination the Panel had received a draft s106 agreement from the SDNPA (REP-589), which specified the effort considered necessary by the SDNPA in terms of man-days and equipment, together with the applicable daily rates and costings related to a series of specified mitigation and enhancement works. Separate costs were also provided in relation to a monitoring fund.
- 4.113 The applicant offered a UU (REP-662) in favour of the SNDPA which included some similar works to those specified by the SDNPA but which also excluded some of the works proposed by the SDNPA. The terms of the UU relating to the works that were offered provided for these works to be completed at a significantly lower cost than proposed by the SDNPA. Discussion of the differences between the positions are discussed earlier in this chapter at paragraphs 4.31 et seq.

Sites of Special Scientific Interest (SSSIs)

- 4.114 The applicant's ES Section 24, 'Terrestrial Ecology' (APP-081) provides a list of statutory designated sites. It lists SSSIs that are located within 5km of the proposed development. In order of increasing distance away from the proposed cable route corridor, the sites are identified as follows:
- Beeding Hill to Newtimber Hill SSSI (this is 46m from the project site and the only statutory designated site within 100m of the proposed cable route corridor)
 - Cissbury Ring SSSI
 - Adur Estuary SSSI

- Horton Clay Pit SSSI
- Chanctonbury Hill SSSI
- Wolstonbury Hill SSSI

The ES does not list distances from the project for the other SSSIs but they are identified on Figure 24.1 (APP-118).

- 4.115 The only SSSI from the above list assessed as sufficiently close to the proposed works to be affected during the construction stage is the Beeding Hill to Newtimber Hill SSSI. The ES assessment suggested that there would be no direct impact, but working areas are proposed to be restricted to a 40m strip, as a worst case, which passes by some 46m away from the SSSI boundary. Potential for disturbance to the chalk grassland species is therefore assessed as negligible and the residual effect is assessed as 'significant beneficial' as a result of the potential to use the monitoring data related to the proposed mitigation works at Tottington Mount⁹ that would be provided to NE annually to inform future management plans for this SSSI (REP-268) and (REP-497). No further issues were raised regarding these SSSIs.
- 4.116 The applicant's ES Section 9, 'Nature Conservation' (REP-066) identifies eight coastal SSSIs that are within the 30km study area, which are:
- Brighton to Newhaven Cliffs SSSI (13.5km north)
 - Seaford to Beachy Head SSSI (14.5km northeast)
 - Adur Estuary SSSI (13km north)
 - Climping Beach SSSI (18km northwest)
 - Felpham SSSI (24km northwest)
 - Bognor Reef SSSI (25km west)
 - Pagham Harbour SSSI (28km west)
 - Selsey, East Beach SSSI (30km west)
- 4.117 The habitat interests are a combination of coastal (eg saltmarsh and vegetated shingle), intertidal (eg mudflats) and marine (eg rockpools and eroded reef). Some also have geological and geomorphological interest.
- 4.118 These sites were assessed by the applicant as not having the potential to be directly impacted by construction and decommissioning because they would lie outside the '*limits of the project development*' (APP-081). The main potential operational impacts were identified as possible barrier, displacement and collision effects (ie collisions between birds and WTGs). The applicant considers these impacts in more detail in its ES Section 11 on 'Ornithology' (APP-068). Other potential operational impacts are identified in the ES as minor temporary increases in sediment and seabed thickness assessed as 'negligible', as described in ES

⁹ Discussed in more detail in this chapter under the heading 'Chalk grassland'.

Section 6 on 'Physical Environment' (APP-063) and ES Section 7 on 'Benthos and Sediment Quality' (APP-064).

4.119 NE advised in its written representation (REP-297), that it was not possible on the basis of the evidence at that time to exclude the potential for an adverse impact on features at the following SSSIs:

- Brighton to Newhaven Cliffs SSSI
- Bognor Reef SSSI
- Pagham Harbour SSSI.

4.120 The first SoCG between the applicant and NE recorded disagreement regarding the adequacy of the impact assessment relating to kittiwake and herring gull populations associated with the Brighton to Newhaven Cliffs SSSI (REP-233). Further details are reported in relation to marine ornithology considerations below.

4.121 In connection with Bognor Reef SSSI and Pagham Harbour SSSI NE raised concerns in its relevant representation (REP-152) and its written representation (REP-297) regarding the robustness of the applicant's ES assessment of the potential effects upon shoreline sediment morphology. NE's submission indicated that a longer term monitoring programme was needed, that more information was required regarding the location of sandwaves and on the method of cable burial and any potential interruption to sediment movement arising from cable exposure or from the use of cable protection measures. In its written representation NE acknowledged that further work was being undertaken by the applicant that might alleviate the concerns raised (REP-297).

Local Nature Reserves (LNRs)

4.122 The applicant's ES Section 24, 'Terrestrial Ecology' (APP-081) lists statutory designated sites and LNRs that are located within 5km of the proposed development. These are listed below in order of increasing distance away from the proposed cable corridor. Distances are not given in the ES, but the locations are plotted on Figure 24.1 (APP-118).

- Mill Hill LNR
- Tottington Wood LNR
- Lancing Ring LNR
- Widewater Lagoon LNR
- Shoreham Beach LNR
- Benfield Hill LNR

The ES does not identify that the Rampion project would give rise to any effects in relation to these sites and no issues were raised by any IPs in their regard that would require attention within the terms of the Order.

Non-statutory designated sites

- 4.123 The applicant's ES identifies 83 non-statutory designated sites within the 2km search area, of which 12 are within 100m of the proposed cable corridor. These include sites of nature conservation importance (SNCIs), notable verges (NVs), areas of ancient and semi-natural woodland (ASNWs) and regionally important geological/geomorphological sites (RIGSs).
- 4.124 Construction stage impacts resulting in direct habitat loss are predicted to affect three SNCIs and a NV as they are crossed by the proposed cable corridor.
- (i) Applesham Farm Bank SNCI
- 4.125 The applicants ES (APP-081) states that predicted habitat loss of some new plantation in which high numbers of reptiles were reported at Applesham Farm Bank SNCI (which is in the South Downs National Park) will be compensated for by scrub removal on a nearby chalk grassland embankment. Mitigation to compensate for loss of some new plantation will be secured through DCO Requirements 29 and 39 as set out in the 'Schedule of Mitigation' (REP-268). The ES states works will be temporary (two to five years) and habitats will be fully reinstated resulting in significant beneficial impacts at a site level.
- (ii) Erringham Farm Valley and Road Cutting SNCI and A283 Steyning Road Notable Verge
- 4.126 These sites share the same boundary where the cable corridor crosses. The ES predicts temporary, direct loss of the NV and chalk grassland, potential for loss of a notable plant species, temporary land take on semi-improved neutral grassland, the need for reptile translocation and direct impacts on a temporary pond and potentially on a permanent pond. Mitigation will include minimising road widening, harvesting seed from the verge prior to the works commencing to aid final restoration and installing protection over a farm track where the notable plant species occurs. Temporary (one to two years) habitat loss will also be compensated for by reinstatement of derelict ponds (also see later under great crested newt). The applicant assessed the residual effect to be significant and beneficial at a county level. Mitigation was set out in the applicant's 'Schedule of Mitigation' (REP-268), secured through the Outline Ecological and Landscape Management Plan (ELMP) (REP-497), secured through DCO Requirements 28 and 29. The ELMP identifies this site as covered by a site specific method statement (SSMS) number 1.
- (iii) The Lower Cokeham reedbed and ditches SNCI
- 4.127 The Lower Cokeham reedbed and ditches SNCI provides valuable roosting and nesting sites for a number of birds. This site is not in the National Park. The ES predicts there is potential for indirect

construction impacts associated with pollution events because it is connected to wet ditches across the wider area, some of which fall within the HDD working area. The effects are assessed as not significant. DCO Requirement 19 secures the necessary pollution prevention as set out in the 'Schedule of Mitigation' (REP-268).

Landscape –scale initiatives

- 4.128 The ES (APP-081) identifies that the proposed cable corridor also crosses a number of landscape-scale initiatives as follows:
- a proposed biosphere reserve for the South Downs between the River Adur and River Ouse;
 - five Biodiversity Opportunity Areas (BOAs), which are areas of opportunity for the restoration and creation of Biodiversity Action Plan (BAP) habitats and
 - the South Downs Way Ahead (SDWA) Nature Improvement Area (NIA), one of the key objectives of which is the maintenance, restoration and creation of chalk grassland on a landscape-scale.
- 4.129 The ES also identifies relevant UK Biodiversity Action Plan (UKBAP), Habitat Action Plans (HAPs) and local HAPs identified by the Sussex Biodiversity Partnership. The ES describes the rarity value of the BAP habitats and how they are affected by the proposed corridor route and substation. It also mentions notable plant species and nationally scarce species that are affected.

Ancient semi-natural woodland (ASNW)

- 4.130 The applicant's ES identifies areas of ASNW. One lies in the Old Erringham Farm Valley and Road Cutting SNCI and two areas lie outside designated sites at Woodhouse Wood and Paddock Wood, but both are close to or within the working width for the cable corridor. No direct loss of trees is predicted, but it is acknowledged there may be indirect negative impacts as a result of damage to root zones of trees located close to the works.
- 4.131 The ELMP (REP-497), secured through DCO Requirements 28 and 29 in the National Park, makes provision for implementing tree protection measures, including clearly identifying ASNW, avoiding trees where possible and root protection systems. The second version of the Outline Arboricultural Method Statement (REP-498), submitted in response to ExA second round of questions was agreed by the relevant planning authorities to be fit for purpose. The ELMP sets out working practices and contains an SSMS for one area of ASNW.

Chalk grassland

- 4.132 The applicant's ES Section 24 on 'Terrestrial Ecology' identifies three discrete areas of chalk (calicolous) grassland through which the cable corridor route passes in which the grassland has not

been ploughed up and converted to arable or improved grassland. These are:

- East of Lambleys Barn, where the grassland is in unfavourable condition but has potential to become species-rich with the right management;
- Old Erringham Farm Valley and Road Cutting SNCI, where the grassland is species rich and includes some noteworthy plant species and
- Tottington Mount, also species rich with noteworthy plant species and it has been included on the recent chalk grassland opportunity mapping prepared by the Sussex Biodiversity Record Centre for the SDNPA.

This type of grassland is designated as a UK and Sussex Biodiversity Action Plan priority habitat due to the large scale losses to intensive agriculture that have taken place. Chalk grassland is also a feature of a number of the SSSIs, LNRs and SNCIs.

- 4.133 The ES predicts that impacts will be at construction stage, comprising direct habitat loss of a temporary (two to five years) nature, resulting in county level significant negative impact. In terms of mitigation, the applicant reported that there were some route changes during the design process to avoid direct impacts upon some areas of chalk grassland (APP-081). It was however suggested that of the three areas where chalk grassland cannot be avoided, the most notable predicted impact is at Tottington Mount. Tottington Mount is highly visible and is the site of a Scheduled Ancient Monument (heritage impacts and mitigation of this site are described in the section titled 'Heritage' in this chapter).
- 4.134 The applicant ES (APP-081) identifies potential indirect negative impacts at Tottington Mount including: settlement in trench areas, changing soil conditions including pH and changing soil depths, which could both affect species that will recolonise and alter plant communities; and finally loss of plant material that may result in bare earth and therefore increased risk of erosion. The extent of the impact, which is reported to be agreed by the SDNPA, is set out in the applicant's oral summary of hearings (REP-444). In the ES the applicant described different working practices for different parts of the Tottington Mount area where chalk grassland would need to be removed and restored, based on the locally varying topography, as steep as 1:2.5 in places. This is set out in some detail in the applicant's ES Section 24 (APP-081) and in the project description in ES Section 2 (APP-059). More detail for mitigation including harvesting seed and processing and storage at the Kew Millennium Seed Bank was agreed at the Biodiversity ISH (HR-072-HR076) and (REP-444).
- 4.135 In its response to the SDNPA's LIR (REP-343), the applicant reported that the SDNPA stated in its LIR (REP-226) in relation to

Tottington Mount that it is agreed that '*the impact of the proposed cable route with an up to 30m¹⁰ working width, upon the chalk grassland is not adequately considered resulting in a lack of confidence in the proposed restoration.*' The SDNPA also noted the rarity value of chalk grassland and the '*notorious difficulty*' of recreating this habitat. In addition the SDNPA highlighted that Tottington Mount displays very challenging topography and that the applicant's proposed mitigation measures are untested. The SDNPA commissioned independent engineering advice in relation to the practicalities of cable corridor construction at Tottington Mount. The SDNPA's submissions regarding this topic also drew upon the Park Authority's experience of a chalk grassland restoration being completed as part of a Government funded NIA project 'South Downs Way Ahead' (SDWA).

- 4.136 During the course of the examination, the SDNPA was consulted by the applicant regarding the ongoing preparation of a bespoke Tottington Mount Management Plan (TMMP) (REP-228), which addressed some of the SDNPA's concerns. The Outline TMMP was submitted by the applicant as Appendix 5 in its response to the ExA's Rule 17 request (REP-425). It proposes reinstatement of the chalk grassland and post-reinstatement monitoring. Initially the applicant offered five years' monitoring, but in response to comments by the SDNPA and NE this offer was later revised to provide for a monitoring period of ten years. The update to the SoCG between applicant and the SDNPA (REP-623) confirms that the Outline TMMP is agreed, as well as the ELMP (REP-497) were both agreed between parties. The proposed reinstatement and monitoring are secured within the recommended DCO through Requirements 40 and 29 respectively. Article 40 of the recommended DCO list the outline TMMP and the outline ELMP as documents for certification.
- 4.137 The Panel's assessment of and conclusions regarding the different positions adopted by the parties in connection with chalk grassland restoration and other mitigation for the South Downs National Park and our recommendation regarding the way in which the SoS should address the potential impacts are set out earlier in this chapter in the section on Appropriateness and necessity of any planning obligations with planning authorities (LPAs).

Other habitat loss

- 4.138 The applicant's ES Section 24 (APP-081) reports other habitats where losses will occur. These include woodland, scrub and trees, grassland (agricultural, unimproved and semi-improved), marshy grassland and swamp, coastal shingle, saltmarsh, rivers and streams, ponds, arable and semi-urban habitats. Impacts are at construction stage and temporary. The mitigation proposed is set

¹⁰ The applicant's ES describes an actual working width of no wider than 30m, with a general working width of 40m wide allowed for in DCO to allow 10m for micro-siting tolerance (AP-059)

out for all these habitats in the 'Schedule of Mitigation' (REP-268), and secured through the following DCO requirements:

- Requirement 19 for surface water and foul drainage
- Requirement 26 for the CEMP
- Requirement 28 for the ELMP
- Requirement 29 for the ELMP in the National Park
- Requirement 39 for restoration of land used temporarily for construction
- Requirement 40 for restoration of land used temporarily for construction in the National Park

Hedgerows are discussed separately under the landscape and visual section of this chapter and below in this section in relation to habitat for bats.

Mitigation outside the National Park

- 4.139 It was agreed by the applicant and NE in the SoCG submitted on 15 August 2013 (REP-241) that '*the Rampion project should aim to go beyond merely mitigating for its impacts on the natural environment and demonstrate a genuine benefit for biodiversity. To this end the applicant will explore further with local environmental consultees such as the South Downs National Park, the West Sussex County Ecologist and the Sussex Wildlife Trust to understand what contribution this project can make to the NIA¹¹, BOAs¹² crossed by the Project. Further enhancements agreed should be included within the Ecological & Landscape Management Plan.*'
- 4.140 The Joint Council's LIR (REP-227) made clear that despite ongoing dialogue with the applicant, they felt there was a lack of clarity over ecological mitigation measures. The Joint Councils also made the point in their LIR that enhancement rather than just mitigation measures should underpin the ecological reinstatement works (REP-227).
- 4.141 WSCC confirmed in its response to ExA's first round of questions that it was not aware of any significant ecological issues that would warrant rejection of the proposals, but considered the proposed mitigation, compensation and enhancement measures insufficiently robust (REP-335). In particular, WSCC cited inadequacy of the draft ELMP and its view that a ten year aftercare period (not five) was needed to ensure full establishment of replacement habitat.
- 4.142 The applicant provided a 'Schedule of Mitigation' (REP-268) in response to the panel's Rule 8 request. The contents of this are referred to below in relation to different impacts and mitigation. It

¹¹ Nature Improvement Area

¹² Biodiversity Opportunity Areas

should be noted that the numbering in the final column which refers to the means of securing mitigation through DCO requirement and DML condition does not agree with the final DCO and DML numbering¹³. However, the Panel considers the requirement and condition descriptions included in the schedule to be adequate. The schedule lists mitigation which is proposed to be secured through the Outline EMLP (REP-497). Appendix 1 of the ELMP, Environmental Statement Commitments, sets out a schedule of mitigation, which lists impacts, mitigation and DCO requirement or condition through which mitigation is secured. Some elements of mitigation are further detailed in specific method statements, such as Protected Species Method Statements (PSMSs) and Site Specific Method Statements (SSMSs). The ELMP (outside the National Park) is secured in Requirement 28 of the recommended DCO.

- 4.143 The applicant and WSCC reached agreement on a number of matters in their 'Update on Matters not Agreed in SoCG' (REP-540). This covered matters in addition to those agreed earlier; including a ten year aftercare period, an updated hedgerow management plan – which includes further hedgerow enhancement measures, green infrastructure enhancements at the substation site along the proposed cable corridor and agreement to the methodology included in the Outline Arboricultural Method Statement. The SoCG update also included confirmation that the outline ELMP has been sufficiently developed and WSCC is in agreement with the approach adopted in the ELMP version 2 submitted as Appendix 18 to the applicant's response to deadline IX (REP-497). This version does include a ten year aftercare period.
- 4.144 The applicant and WSCC also reach agreement on a Planning Performance Agreement (PPA), this was confirmed in WSCC's response to the Rule 17 request (REP-629), and a s106 agreement (REP-621) that provides for a mitigation fund and a monitoring fund that relate to ecological connectivity benefits and enhancement of existing Public Rights of Way outside the boundaries of the National Park. These enhancements deliver some of the objectives as set out for the NIA, BOAs and biosphere.

Nature conservation designations - Marine¹⁴

Marine Conservation Zones (MCZs)

- 4.145 MCZs are a marine protected area created under the Marine and Coastal Access Act (2009). At the time of preparation of the application MCZs had not been officially designated, but were so during the examination. It was therefore important that the

¹³ This is explained in the DCO chapter 8 of this report, but arises because condition and requirement numbering changed during the examination.

¹⁴ SPAs, SACs and SCIs are not covered here because they are reported under chapter 5 on Habitats.

applicant's assessment had taken into account the potential impacts on a MCZ. This point was confirmed by NE in its summary from the Biodiversity ISH on 4 December 2013 (REP-581) '*Natural England agrees with the Applicant's response that the Kingmere MCZ has been treated as a designated site throughout the process and therefore the recent confirmation of this designation will not affect any of the assessments made.*'

4.146 The applicant's ES assessed the impact on recommended MCZs (rMCZs) within 80km of the proposed development. The rMCZs are those proposed MCZs that had been submitted to Defra by NE at the time of the ES preparation and they are:

- Kingsmere Reef rMCZ (4.1km northwest of the project site and within 1km west of the cable corridor) conservation features include subtidal chalk, subtidal sands and gravel and native oyster. Black bream is proposed as a feature of conservation interest (FOCI) species based on the importance of the area for nests;
- Beachy Head East and West rMCZ (12.5 km from project site) conservation features include subtidal chalk and associated littoral communities, mussel beds and native oyster and seahorses. Intertidal and shallow subtidal elements are included in the draft reference area of Belle Tout to Beachy Head, covered by this rMCZ;
- East Meridian rMCZ (6.4km south and east of project site); conservation features are sediment types and benthic diversity;
- offshore Overfalls rMCZ (12.5km west and southwest of the project site); conservation features are mixed sediments, chalk rock and seahorses and
- offshore Brighton rMCZ (23.5km to the south of the project site) conservation features include rock seabed types, benthic species richness and high benthic biotype distinctiveness.

4.147 The applicant identified the potential for major negative impact on black bream, a feature of conservation interest (FOCI) of the Kingsmere Reef rMCZ. In its written representation (REP-297) NE set out its concerns that any negative impact on the black bream feature of conservation interest (FOCI) of Kingsmere Reef rMCZ would contravene the conservation objective. It is agreed in the SoCG between applicant and NE (REP-233) that the black bream has been assigned a recovery conservation objective and that any negative impact would contravene this objective. Matters related to mitigation for black bream are satisfactorily resolved and secured and are described below in this section under the sub-heading of 'Fish and shellfish'.

4.148 NE also refers to the potential impact on both Beachy Head West rMCZ and Kingsmere Reef rMCZ resulting from potential negative impacts resulting from cable installation on the Annex 1 and BAP priority reef habitats of subtidal chalk reef, which is a feature of

both MCZs. We report this in more detail below in this section under the sub-heading 'Subtidal and intertidal habitats'. NE points out that management measures for MCZs have not yet been put forward (REP-326). Matters relating to the conservation features for the other MCZs listed above are reported under the relevant sections of this chapter.

Non-statutory designated sites

Marine Sites of Nature Conservation Importance (MSNCIs)

4.149 These sites are recognised as being of county-wide importance for nature conservation. The applicant's ES lists 24 MSNCIs which are recognised by the local Councils. The closest are:

- City of Waterford wreck (lies along the eastern boundary of the proposed OWF);
- Looe Gate (within 3.5km of the export cable);
- Worthing Lumps (4.5km west of the cable route corridor) and
- Kingmere Rocks (8km west of the cable route corridor).

4.150 The only site which is not outside the project limits is the City of Waterford wreck, which is reported to be covered in dead men's fingers (*Alcyonium digitatum*) and a variety of anenomes. Unmitigated construction stage impacts on the habitats it supports are predicted as negative major/moderate because factors contributing to its nature conservation status would be compromised. The applicant explains there will be no direct damage to this MSCNI because it will have an exclusion zone placed around it based on archaeological interest and cables and WTGs will be designed away from this area. This is secured in the DML Schedule 13, Condition 11.

Nature conservation designation: conclusions

4.151 Based on the reporting above, the Panel is satisfied in the main that issues raised during above examination in connection with impacts on nature conservation designations are satisfactorily resolved through the mitigation proposed by the applicant and securing that mitigation in the DCO and DMLs. The sections above have described starting positions and differences where they arose and how matters have been resolved during the examination proceedings.

4.152 There is only one aspect of effects on biodiversity, where the Panel considers that residual concerns remain. That relates to the mitigation of effects upon the priority habitat of chalk grassland in the National Park. Our recommendations on this to the SoS are reported in the later section in this chapter under 'Landscape, Seascape and visual impacts'. As regards all other matters relating to nature conservation designations, the Panel is satisfied that the information submitted to the examination demonstrates that impacts on both terrestrial and marine nature conservation

designations would be satisfactorily mitigated as required by EN-1 section 5.3 and there are no other matters outstanding that would argue against the recommended Order being made.

Terrestrial ecology (excluding ornithology and HRA)

- 4.153 The applicant and NE agreed in their SoCG (REP-233) that ES Section 24, 'Ecology' and relevant appendices provide an accurate description of the baseline conditions and that these documents provide an adequate assessment of the effects of the project on ecological resources in line with EN-1 para 5.3.3¹⁵. It was also agreed that the ELMP is the appropriate means of securing mitigation through the DCO. Furthermore it was agreed that the Rampion OWF project should aim to do more than merely mitigate its impacts to demonstrate a genuine benefit for biodiversity, in particular in relation by exploring contributions to the NIA and BOAs affected. The final version of the SoCG between applicant and the SDNPA (REP-623) agrees the ELMP.

European protected species (EPSs)

(iv) Bats

- 4.154 The applicant's ES Section 24 (APP-081) indicates that no existing bat roosts were found within the proposed working width and buffer, although the following species were recorded commuting and foraging along the proposed cable corridor and substation area: Common Pipistrelle (*Pipistrellus pipistrellus*), Soprano Pipistrelle (*Pipistrellus pygmaeus*), Nathusius' Pipistrelle (*Pipistrellus nathusii*), *Myotis/Plecotus* species, *Nyctalus* species and Serotine (*Eptesicus serotinus*). The applicant identifies that eleven of the fifteen locations where more than 200 bat passes were surveyed are crossed by the proposed cable corridor.
- 4.155 The assessment predicts that the loss of habitat for commuting and foraging, particularly as a result of removal of hedgerow sections during construction will reduce insect biomass and lose connectivity. The applicant set out mitigation measures in the ES including hedgerow gap planting, night time gap-filling with dead vegetation, selective use of larger nursery stock for hedgerows important for bats, compensatory planting, trenching and ducting restrictions to between 7am and 7pm and an agreed lighting strategy should 24 hour working be required. The mitigation set out in the applicant's Appendix 1, ES Commitments, of the ELMP version 2 (REP-497), for roosting bats and commuting and foraging bats includes surveys, cable route refinement, replanting of removed hedgerows, restrictions on hours for trenching and ducting, a lighting strategy to be agreed with WSCC where 24 hour working is required and provision of bat boxes. It also states

¹⁵ This refers to terrestrial and marine nature conservation designations

'a mitigation strategy will be employed to minimise impacts for roosting bats during construction of the cable'.

4.156 NE in its written representation (REP-297) considered trees with bat roosting potential could be affected by the works and hedgerow loss could lead to adverse impacts on bat commuting and foraging. NE concluded that providing mitigation measures are secured through the DCO, then significant impact on bats is unlikely. In the 10 December 2013 SoCG update between applicant and NE (REP-575), it was agreed between the relevant parties that the Protected Species Method Statement (PSMS) for bats requested by NE was provided.

4.157 The Outline ELMP (REP-497), including PSMSs, is secured in the DCO through Requirement 28 and 29 (in the South Downs National Park). The ELMP also set out working practices and details work to hedgerows and a PSMS for pre-works vegetation clearance. Requirements 37 (EPSs onshore) and 38 (EPSs in the South Downs National Park) set out the obligation for pre-construction surveys to establish presence of EPSs and for an agreed mitigation strategy to be submitted and approved in writing prior to commencement of relevant part(s) of the connection works. Additionally, the s106 agreement with WSCC (REP-621) allowed a sum for hedgerow enhancement outside the National Park boundary to benefit connectivity and offset impacts caused by temporary hedgerow removal. Both the applicant's UU (REP-622) and the SDNPA's draft s106 agreement (REP-461) made allowances for some hedgerow enhancement within the National Park.

(v) Dormouse (*Muscardinus avallanarius*)

4.158 The applicant's ES section 24 (APP-081) notes that hazel dormouse (dormouse) is a UKBAP priority species and a species of importance in the Brighton and Hove draft Local BAP. There was only one record of dormouse in the desk survey dating to 1981. However the applicant's habitat surveys identified two large areas of suitable habitat that could not be surveyed and one nest. Dormouse presence is therefore assumed.

4.159 The applicant's ES predicts temporary (two to five years) negative effects from construction stage habitat removal, including injury and disturbance to individuals. Indirect impacts predicted may occur associated with disturbance of potential commuting and foraging corridors. The mitigation proposed includes reduced cable corridor widths at potentially sensitive locations. Also vegetation clearance would be undertaken by hand and vegetation would be coppiced under a licence from NE between November and March to avoid times when the dormice might be in above ground nests. More work involving small vegetation clearance on successive days would be required if work is undertaken between May and late September. Hedgerow breaches would be dealt with in the same

way as described above for bats. Final mitigation would be set out in a mitigation statement as part of the process for an EPS licence. Relevant mitigation is secured through DCO Requirements 28, 37 and 38. Requirements 28 and 29 secure the Outline ELMP (REP-497), outwith and within the National Park. The Outline ELMP sets out dormouse mitigation as one of the PSMSs and lists working methods.

(vi) Great crested newt (*Triturus cristatus*)

- 4.160 The applicant's ES (APP-081) and supporting technical appendices state that great crested newt is a UK BAP priority species. The applicant's desk study revealed records in the 2km search area and 23 of 69 ponds surveyed had confirmed presence. Buffers were applied, some of which overlap, leading to six discrete areas in the proposed cable corridor identified as having risk of great crested newt being present. One area covers some of the substation site. The direct effects predicted are mortality and injury by machinery and dispersal routes lost through trenching. The risk was assessed as being present for the newts' terrestrial phase. No newt breeding ponds would be lost. An area of 7ha of suitable great crested newt terrestrial habitat would be lost at the proposed substation.
- 4.161 The applicant proposed a translocation programme, to be discussed with NE and compensatory planting at the substation site that would also maintain and enhance dispersal routes. The Joint Councils LIR (REP-227) supported the mitigation for great crested newt translocation to be agreed with NE, but also sought further enhancement. In response to the ExA's first round of questions, the applicant indicated it would be preparing a draft European protected species (EPS) licence application to NE for great crested newt. NE did not agree with leaving receipt of EPS licence information until after the DCO is confirmed (REP-345). In response to the ExA's written questions, NE reported that the applicant had submitted draft licences (REP-409). We have no reason to believe that the licences will not be granted by NE as no parties gave any indication that EPS licences would not be granted if and when required. In the update to the applicant and NE SoCG (REP-575), it was agreed that the habitat and species mitigation plans requested by NE had been provided.
- 4.162 The applicant proposed in the 'Schedule of Mitigation' (REP-268) that three derelict ponds be reinstated at Old Erringham Farm Valley and Road Cutting SNCI is proposed and this too would comprise enhancement for great crested newt. The proposed mitigation is secured in the recommended DCO in Requirements 28, 29, 37, 39 and 40. The ELMP (REP-497), secured through Requirements 28 and 29 include a PSMS for great crested newt and sets out working practices, areas of suitable habitat creation and long term mitigation for the substation site.

Nationally protected terrestrial species

(i) Otter (*Lutra lutra*) and Water vole (*Arvicola amphibius*)

4.163 Habitats were surveyed for otter and assessed as not suitable. Suitable habitat for water vole was surveyed, but no evidence was found. Neither of these species was considered further.

(ii) Widespread reptiles

4.164 The applicant's ES (APP-081) confirms that four UKBAP priority reptile species were identified in the desk survey: adder (*Vipera berus*), grass snake (*Natrix natrix*) slow-worm (*Anguis fragilis*) and common lizard (*Lacerta vivipara*). The Phase 2 habitat surveys recorded presence of all species apart from adder. Numbers are assessed as low in the proposed cable corridor and substation areas, but there are higher numbers recorded in some other areas, including two of the SNCIs.

4.165 In the SoCG between applicant and NE, it was not agreed (REP-233) that sufficient information had been provided regarding the mitigation measures for the three species of reptiles found along the cable corridor route to enable NE to reach an informed view on the potential negative impact on the species. Details of receptor sites and enhancement were outstanding. The applicant later provided a revised reptile mitigation strategy to NE and then submitted correspondence between NE and itself (REP-624) to the ExA at the final examination deadline. The correspondence, which indicated that NE remained of the view that the Rampion Reptile Method Statement did not follow all elements of best practice, but that the most recent version, was sufficient to confirm it can be moved to the 'Matters Agreed' section of the SoCG. NE indicated that this stance was largely due to the temporary nature of the impacts and the likely limited impact on reptile populations.

4.166 The Reptile Method Statement was secured through the ELMP (REP-497), which sets out reptile mitigation as one of the PSMs and lists working methods and identifies locations where notably higher numbers of reptiles were recorded, including reptile translocation for three of these five areas. The ELMP is secured in the recommended DCO through Requirement 28.

(iii) Badger (*Meles meles*)

4.167 The applicant's ES (APP-081) states that badger evidence and habitat suitable for badger setts were found along the entire proposed corridor route and substation area. Phase 2 surveys found 15 separate badger setts. Location details were contained in a confidential badger technical report. Up to three setts were predicted to experience temporary disturbance and four setts might need to be closed permanently and in some places fences might constitute temporary barriers to movement. The impact on foraging was assessed as minimal.

- 4.168 Mitigation proposed by the applicant included re-surveying of all identified sets and a pre-construction walkover identified any new setts prior to submitting a method statement to NE detailing construction methods. Stock proof fencing would be used to prevent badgers entering construction areas and in areas of high badger activity, ramps would be installed if trenches are left open overnight. Working areas would be micro-sited to avoid the need to close setts that are on the edge of the working area. The applicant stated the licencing requirements to allow working close to active badger setts would fulfil the mitigation required (REP-268). There were no submissions to the contrary.
- 4.169 Mitigation for badger would be secured through the ELMP (REP-497), which sets out badger mitigation as one of the PSMSs and lists working methods and pre-construction works and identifies licence requirements. The ELMP is secured in the recommended DCO through Requirements 28 and 29.

Terrestrial invertebrates

- 4.170 The applicant's ES (APP-081) reports that five butterfly and two moth species which are UKBAP species were recorded in surveys, that nine of the terrestrial invertebrate species recorded feature in the Nationally Scarce category and that 48 are listed as Nationally Local. A scoping survey at the substation site highlighted invertebrate interest in hedgerows and mature oak trees. Background desk based surveys identified nine terrestrial invertebrate species listed in the Wildlife and Countryside Act 1981. Surveys were then undertaken for specific target butterfly species in combination with sampling for all terrestrial invertebrate groups focussing on high value habitats. Three of the nine species were recorded during Phase 2 surveys along the cable corridor route. They are Adonis blue (*Lysandra bellargus*), Chalkhill blue (*Lysandra coridon*) and Small blue (*Cupido minimus*), all of which are associated with chalk grassland.
- 4.171 The applicant described impacts on the terrestrial invertebrates as significant, temporary (two to five years), local and small because only a small proportion of available habitat would be affected in any given place. At Tottington Mount the applicant identified direct impacts on the Adonis Blue butterfly because its caterpillar stage feeds on a chalk grassland plant. There would also be potential for indirect impacts if construction affected other food plants present and in the case of Adonis Blue there is a complex relationship with black and red ants, which if affected would impact on the butterfly (APP-081).
- 4.172 The applicant's ES and 'Schedule of Mitigation' (REP-286) also consider terrestrial invertebrates. The proposed mitigation of habitat loss and disturbance to individual terrestrial invertebrates is proposed to be addressed through reinstatement and enhancement of their habitats, which are proposed to be secured

through the chalk grassland mitigation described earlier. The applicant pointed out that specific route changes were made to the cable corridor in order to avoid target butterfly species and that specific areas of chalk grassland would be safeguarded from construction works as 'no go' areas. The TMMP addresses the specific requirements in that area regarding the Adonis blue butterfly, which is secured at recommended DCO Requirement 40 and Article 40. Other habitat mitigation is proposed to be addressed through the ELMP, which is secured in recommended DCO Requirements 28 and 29 (in the National Park).

Terrestrial (non ornithology) ecology: conclusions

- 4.173 In relation to all the terrestrial ecology matters raised during the examination, following refinement of the terms of the Order over the examination period, the Panel is satisfied that the necessary controls and mitigation can now be made available through the requirements included within the DCO, the s106 agreement with WSCC and the applicant's UU in favour of the SDNPA. In particular the ELMP's commitments to mitigation combined with its PSMSs and SSMSs provide sufficient detail to enable the consenting authorities to confirm that detailed consents are likely to be made available subject to the submission of satisfactory details. Therefore we advise that the SoS may conclude that the requirements regarding terrestrial ecology as set out in NPS EN-1 Section 5.3 have been met and there is nothing outstanding in relation to that matter that would argue against the recommended Order being made.

Marine ecology (excluding ornithology and HRA matters)

Nationally protected marine species

Seahorses

- 4.174 The applicant's ES Section 8 on 'Fish and Shellfish Ecology' (APP-065) confirms that short-snouted seahorse (*Hippocampus hippocampus*) and spiny seahorse (*Hippocampus guttulatus*) are regularly reported in UK waters and can be found in a wide range of habitats. The ES highlights research which suggests that seahorses are present in shallower waters during summer months for breeding purposes and deeper water during winter months. The applicant's desk based assessment suggests that entire study area for the EIA is a potential over-wintering area for both species of seahorse. Surveys found three short-snouted seahorses. The applicant's ES also sets out the legal context under the Wildlife and Countryside Act 1981, through which the two species of seahorse and their habitats are fully protected out to 12nm.
- 4.175 The applicant's ES identified that seahorses may be exposed to harmful levels of noise during piling of 6.5m diameter monopiles in winter months (when the seahorses are in deeper waters) because

the noise impact area (65m) is more extensive than their swimming distance, which is thought to be under 30m (based on a tagging study for short-snouted seahorse in Dorset). The construction stage impact is assessed to be of moderate to minor adverse significance, but it is acknowledged that the impact could be considerably reduced if piling operations were limited to the use of smaller piles for some of the winter months.

- 4.176 NE's relevant representation (REP-326) and its response to the Panel's questions regarding the likely effects of the project upon fish and shellfish suggested that seahorse migration behaviour should need to be taken into consideration. In response, the applicant worked with the Seahorse Trust and local experts to refine the data on seahorse ecology and to include a more comprehensive evidence based assessment. Information regarding seahorses in the area of the proposed Rampion OWF (REP-382) was provided by the applicant. It concluded that spiny seahorse is no more than an occasional vagrant to the development area. The applicant sets out typical depths and time ranges that can be observed and reasonably assumed for occupation of the area by short-snouted seahorses.
- 4.177 The applicant stated that restrictions which may be imposed as mitigation measures to protect spawning herring would also reduce the magnitude of impact upon seahorses. The Sussex Wildlife Trust in response to the ExA's first written questions (REP-332) wished to secure the application of constraints upon piling activity that would restrict operation to the use of smaller piles in the winter months as proposed by the applicant in its ES (APP-065). Cable routing restrictions to avoid black bream nesting areas were suggested by the applicant as likely to be beneficial in securing reduction of impacts upon seahorses. In its response to deadline VIII, the applicant's summary of its case set out at the Biodiversity ISH on 30 October 2013 (REP-444) suggested that NE considered the combination of the soft-start piling technique; restrictions for black bream and herring, the low density of seahorses; and the likelihood of a piling event occurring in close proximity to a seahorse, provided reasonable mitigation in respect of seahorses.
- 4.178 Following receipt of the applicant's desk based survey regarding the seahorse distribution; NE concluded that short-snouted seahorses are likely to be found in the Rampion OWF area at certain times of year, but that the spiny seahorse was no longer a concern (REP-409). The applicant and NE agreed in the 10 December 2013 update to their SoCG (REP-575) that based on the conclusions of the seahorse data analysis report and on further discussions there would not be a significant adverse impact on the seahorse population associated with the development site.

Subtidal and intertidal ecology

- 4.179 Benthic habitats and species were reported in Section 7 'Benthos and Sediment Quality' of the applicant's ES (APP-064). No intertidal BAP priority habitats were recorded. The desk study showed that the subtidal habitats are complex, with a wide variety of biotopes and high level habitats being common. The following habitats of conservation importance were recorded:
- Native oyster (*Ostrea edulis*)
 - Blue mussel beds/reefs (*Mytilus edulis*) (also a feature of the Beachy Head West rMCZ and a BAP priority habitat)
 - Subtidal chalk also a feature of the Beachy Head West and Kingmere Reef rMCZs and an Annex 1 and BAP priority habitat
 - Ross worm (*Sabellaria spinulosa*) aggregations
- 4.180 The predicted construction phase impacts include permanent and temporary loss of habitat, mortality of nearly all benthos and increased suspended sediment and temporary smothering and clogging of gills and feeding structures. The impact would result from the direct disturbance from jack-up vessels and the installation of WTG foundations and scour protection, export and inter-array cables and cable protection. Operational phase impacts could involve some similar effect to those described for construction stage resulting from maintenance operations and also could result from the presence of a new habitat in terms of the WTG shafts and bases, scour and cable protection. The applicant and NE agreed in the SoCG (REP-233), that such new habitat could result in creating a new ecological niches; which if they introduced non-native species would not be beneficial.
- 4.181 Construction phase mitigation proposed by the applicant in the ES (APP-064) would include minimising the footprint of WTGs and scour protection, pre-construction surveys to inform final WTG locations, micro-siting of foundations to reduce impacts to avoid areas of habitat conservation importance where possible, minimising the number of jack-ups, minimising the width of the cable footprint and the requirement for mattresses and armour, routing of export and inter-array cables to avoid rock areas (minimising impacts to subtidal chalk) and using techniques that minimise sediment suspension. The applicant agreed to work with NE to ensure work is carried out during operations with regard to suitable biosecurity guidance in order to avoid contamination by invasive species.
- 4.182 The MMO highlighted (REP-132) the need for a summary report that would bring together all the relevant marine ecology data into a definitive map to be used for monitoring. However the MMO stated that, if development consent were to be granted, such a summary report could be presented as part of the consultation process into the design of the monitoring surveys. Accordingly a

suitable amendment by the applicant responding to the MMO's suggestion is secured in pre-construction monitoring and surveys at condition 15 in Schedules 13 and 14.

- 4.183 The applicant and NE reached agreement in the SoCG (REP-233) that the applicant would undertake further survey work to ensure avoidance of Annex 1 habitats. Agreement was also reached that NE would be involved in agreeing the mitigation to be secured in the DMLs. Agreement was reached with the MMO in the update to the SoCG that pre-construction micro-siting would be included as mitigation (REP-538). The mitigation, which involves the submission of preconstruction plans and documents for approval in writing by the MMO, pre-construction monitoring, and post construction surveys and monitoring is secured through the Array DML at Schedule 13, Conditions 11, 15, 16, and 17 and the Export Cables DML at Schedule 14, Conditions 11, 15, 16, and 17.

Marine mammals

- 4.184 The applicant's ES Section 10, 'Marine mammals' (APP-067) records sightings of harbour porpoise (*Phocoena phocoena*), bottlenose dolphin (*Tursiops truncatus*), white-beaked dolphin (*Lagenorhynchus albirostris*), minke whale (*Balaenoptera acutorostrata*), common seal (*Phoca vitulina*) and grey seal (*Halichoerus grypus*). Harbour porpoise was the most frequently observed species. It was agreed in the SoCG between applicant and NE (REP-233) that the assessment was completed in accordance with the scope, that it covered an appropriate area and that its description of the baseline conditions provides a fair assessment of marine mammal activity in the area.
- 4.185 The ES (APP-067) assessed construction stage impacts comprising noise and vibration arising from the proposed piling of WTG foundations, collision risk arising from wind farm-related construction traffic and indirect effects arising from changes to prey species disturbed and displaced. The operational phase impacts assessed comprised noise and vibration from turbines, collision risk from operational vessels and the potential for emission of electro-magnetic fields (EMF).
- 4.186 The MMO made comments regarding the absence of a monitoring programme to confirm the extent of sound spread arising from the piling of foundations for the first four WTGs. The MMO queried the appropriateness of the maximum hammer blow modelled in the ES. This latter point was resolved following submission by the applicant of a 'Technical update on underwater noise' (REP-471) that indicated outputs would not differ discernibly from that predicted in the ES. The MMO agreed with this assessment in its updated SoCG with the applicant (REP-539).
- 4.187 NE recommended that an EPS licence be sought for harbour porpoise (REP-507) and confirmed that the MMO's approach to

EPS licensing for marine mammals in terms of timescales was sensible, in particular in relation to harbour porpoise (REP-438). A relevant provision was secured in the Array DML at Schedule 13, Condition 11(f). This section of Condition 11 required the agreement in writing of a Marine Mammal Mitigation Protocol (MMMP). NE confirmed that a similar arrangement was not necessary for the Export Cable DML (REP-438).

- 4.188 The MMO noted in its relevant representation (REP-132) that overlapping sound influences from the proposed Navitus Bay OWF construction, when occurring at the same time as those for Rampion, which could give rise to cumulative effects had been considered in the ES. NE also agreed in its SoCG with the applicant that a formal agreement with the promoter for the Navitus Bay project should be sought in order to secure a joint approach to mitigation of the cumulative impacts of noise on marine mammals. This would include a collaborative approach to managing and monitoring overlap of construction activities (REP-233). The applicant submitted a signed agreement between E.ON and the Navitus Bay applicant that set out terms for the coordination of piling activities with Navitus Bay (REP-383) should both the Rampion and Navitus Bay projects secure consent and move forward to implementation. It included agreement to share information and provides that MMMPs for both OWF developments would include information and specific measures in the event of overlapping construction phases or if any other cumulative impacts were identified. The production of an MMMP is secured in the DCO by Schedule 13, Condition 11(f) of the DML for the Array which requires an MMMP to be prepared and agreed with the MMO, in consultation with NE and JNCC where driven or part driven foundations are to be used. The MMMP would also include a code of conduct to reduce the risk of collision with vessels to be provided to all vessel masters.
- 4.189 Following discussions with the MMO and other relevant parties during the examination, piling restrictions for monopile foundations and limitation of related noise emissions were secured through DML Schedule 13, Condition 20. An appropriate 'soft start' piling procedure would be required under Condition 11(2)(f) of the Array DML at Schedule 13. Condition 11 specifies that a range of other pre-construction plans and documents shall be submitted to and approved in writing by the MMO. A number of these documents would provide for relevant mitigation of effects on marine mammals. They included a cable specification and installation plan that would cover EMF attenuation, a construction and monitoring programme and method statement that would include detailed proposals to reduce noise and vibration from construction works.

Fish and Shellfish

- 4.190 The applicant's ES Section 8 'Fish and Shellfish Ecology' (APP-065) sets out the species, impacts and mitigation for a range of fish and shellfish. Work for the ES included a desk based review, which presented specific data on black bream (*Spondyliosoma cantharus*). Targeted field surveys were undertaken for juvenile and small fish, broad species and spawning Dover sole (*Solea solea*) and a site specific survey to assess spawning condition of black bream. The ES describes in detail the fish and shellfish found in the study area and summarises the life cycles of the key fish and shellfish in that area. The species included are: undulate ray, herring, bass, black bream, seahorse, plaice, Dover sole, cod, edible crab, lobster, cuttlefish, whelk and king scallop. Modelling was undertaken to assess potential effects of underwater noise from piling in terms of lethal or physical effects and auditory damage and behavioural change.
- 4.191 The construction phase impacts, residual effects of which ranged from negligible to moderate; and the proposed mitigation measures identified by the applicant in the ES are shown below:
- lethal or physical injury from piling noise affecting the majority of large, mobile fish and shellfish, seahorses and small fish and auditory injury affecting herring, shad, cod, seahorse, bass, black bream, sandeel, dab and other flatfish and eels; mitigated by soft slow start piling procedures;
 - strong or significant avoidance from piling noise affecting herring, shad, cod, seahorses, bass, black bream, sandeel, dab (and flatfish), plaice and Dover sole; mitigated by piling season limitations according to species and spawning time;
 - seabed disturbance from cable and WTG foundation installation affecting black bream through damage of active nests and mortality or injury of seahorses, commercially important BAP species and non commercial species; mitigated by routing the export cable to avoid black bream nesting sites, avoiding installation in peak spawning period and generally minimising the footprint and
 - cumulative impacts from overlapping piling periods for Rampion and Navitus Bay OWFs, the mitigation for which has been reported above in relation to marine mammals, but which also applies to fish.
- 4.192 Operational phase impacts, the residual effects of which are all assessed as moderate; and the proposed mitigation measures identified by the applicant in the ES are shown below:
- presence of seabed infrastructure leading to habitat loss and permanent addition of artificial habitat; mitigated by minimising infrastructure and burial of cables as far as possible and

- emission of EMF from export cable and inter-array cables resulting in possible changes to some fish; mitigated by cable design parameters to limit EMF emissions and ensuring as far as possible the cable is buried.

4.193 We cover below the three species for which the main concerns were raised regarding suitability of the mitigation proposed.

Black bream (*Spondyllosoma cantharus*) and herring (*Clupea harengus*)

4.194 NE had raised in its s42 response and agrees in its SoCG with the applicant (REP-233) the status of black bream as a FOCI species and the assignment of a recovery conservation objective to the species in the Kingsmere MCZ. NE pointed out that any negative impact from the Rampion OWF would be in contravention of this objective. It was agreed in the SoCG that mitigation needed to be provided and NE had requested the applicant to provide more detail on noise contour plotting associated with different piling types. In the SoCG between the applicant and the MMO (REP-233), it is agreed that NE and the Sussex Inshore Fisheries and Conservation Authority (SIFCA) are best placed to comment on black bream because of the relationship with the MCZ at Kingsmere. In the SoCG (REP-233) the proposed piling restriction for herring and sole from 1 to 31 December was not agreed because it does not cover the peak spawning season. In response to the ExA's first round of written questions, NE stated that black bream spawning periods needed to be taken into account, and that appropriate remedial measures should be required.

4.195 The matter of piling restrictions was discussed in detail at the two Biodiversity ISHs (HR-036 to HR-039 and HR-072 to HR-076). The MMO summarised its position following the Biodiversity ISH on 30 October 2013, indicating that it was not in agreement with the scope of the applicant's proposed piling restrictions for herring spawning. The MMO indicated that it was in agreement with the temporal restrictions proposed for black bream nesting sites; and was awaiting further information regarding spatial restrictions relating to black bream. The applicant confirmed ongoing discussions with the MMO, NE and SIFCA on the spatial extent of the pin piling mitigation. It reported it had been agreed the black beam restriction zone would be defined by a radius extending from the south eastern boundary of the MCZ (REP-444). The applicant also referred to the 3 month herring restriction period proposed by the MMO, which it suggested, when combined with the black bream restrictions would result in nearly half the year restricted. The applicant pointed out that the overall economic viability of the project could suffer if construction was unduly constrained.

4.196 The MMO stated in its hearing summary for the Biodiversity ISH of 4 December 2013 (REP-546) that it was content with the DML conditions for herring as the date restrictions on piling had been

amended. The MMO also indicated its agreement to the revised position for black bream, subject to the inclusion of the co-ordinates for the black bream restriction zone in the relevant condition. This was also confirmed in the applicant's post hearing summary, which contained a plan of the jointly agreed black beam restriction area (REP-560).

4.197 It was agreed in the updated SoCG between applicant and the MMO (REP-539) that there would be no piling restrictions for sole and that the temporal extent of piling restrictions would be as follows:

- Black bream: pile driving for monopile foundations and for jacket foundations (pin piles) - 15 April to 30 June and
- Herring: pile driving for monopile foundations and for jacket foundations (pin piles) - 20 November to 15 January.

Together with the spatial co-ordinates for black bream, these periods of restriction are set out in the recommended Order's Array DML at Schedule 13 Condition 18 (black bream spawning) and Condition 19 (herring spawning).

4.198 NE confirmed that it agreed with the temporal piling restrictions in relation to the conservation interest of black bream (REP-581). Additionally, the spatial restriction in relation to the Kingsmere MCZ boundary based on restrictions in relation to herring and cuttlefish to the MMO. New noise modelling had been agreed. NE deferred to the MMO in relation to the matter of any piling restrictions that might be required for herring and cuttlefish.

4.199 The remaining mitigation would be secured through the Array DML Schedule 13, Condition 11 which requires the submission and approval in writing by the MMO of preconstruction plans and documents as described above for marine mammals. It was also agreed between the applicant and the MMO in the SoCG (REP-233) that use of AC cables rather than DC cables would reduce EMF and its potential impact on fish.

Cuttlefish (*Sepia officinalis*)

4.200 The applicant's ES Section 8, 'Fish and Shellfish Ecology' (APP-065) reports the presence of cephalopods including the highly mobile cuttlefish, which move into the shallow Sussex waters to breed, laying eggs from February to May on objects such as seaweed and artificial structures such as crab pots and ropes. The applicant reported in its ES that the issue of potential damage or disturbance to cuttlefish had been raised at the pre-examination stage by Sussex Wildlife Trust (SWT) in connection with potential sensitivity to noise. In response to this, the applicant had appointed underwater noise specialists to review available evidence which was presented in ES Appendix 8.6 (APP-143). The applicant reported that there was evidence that cuttlefish

audiological sensitivity and therefore risk is somewhat lower than that for the least sensitive fish. The ES also stated that death and physical injury are unlikely to occur for actively swimming shellfish such as cuttlefish as they would avoid the area once piling commences.

- 4.201 In its relevant representation (REP-132) the MMO welcomed attention being paid to cuttlefish mitigation including the ES proposal to relocate any fishermen's pots with eggs attached. The MMO in its SoCG with the applicant (REP-233) and in response to the ExA's written questions (REP-338) indicated it had requested the applicant to provide further information regarding the cuttlefish mitigation. The applicant explained that the majority of potting and trapping occurs inshore of the wind farm site and does not occur in the export cable corridor. It suggested that where activities need to be excluded this exclusion would be temporary and would not long term impact upon cuttlefish (REP-444). The updated SoCG between the applicant and the MMO (REP-539) confirmed it had been agreed that piling restrictions for cuttlefish would not be applied, but that provision would be made in the DML to confirm how impacts to cuttlefish spawning would be minimised within the cable specification and installation plan. This confirmation is secured to the MMO's satisfaction in DML at Schedule 14, Condition 11 (g)(iv), which specifically refers to minimising impacts on cuttlefish. The exclusion zone for export cables secured under the Export Cables DML Schedule 14, Condition 3 also limits the likely area of impact.

***Marine ecology (excluding ornithology and HRA matters):
Conclusions***

- 4.202 The Panel is satisfied that the necessary controls and mitigation are in place through the requirements and conditions included within the recommended DCO (including the relevant DMLs schedules) in relation to all the marine ecology matters raised during the examination. The SoS may therefore conclude that the requirements of EN-1 (Section 5.3) and EN-3 (Sections covering offshore wind biodiversity, fish, intertidal and marine mammals) in relation to marine ecology (excluding ornithology and HRA matters) have been met and there are no outstanding matters in this regard that would argue against the recommended Order being confirmed.

Terrestrial (non-HRA) ornithology

- 4.203 The applicant's ES Section 24, 'Terrestrial Ecology' (APP-081) explains that a background data search was undertaken to inform the assessment. It included notable species comprising three Schedule 1 species from the Wildlife and Countryside Act 1981, six Red list species and eight Amber list species, some of which are UKBAP species. In addition site surveys recorded barn owl (*Tyto alba*) and little egret (*Egretta garzetta*) and long-eared owl (*Asio*

otus) and stone curlew (*Burhinus oedicanus*) in the vicinity of the proposed cable corridor.

- 4.204 The ES assessed likely direct impacts, which would arise from temporary (two to five years) loss of potential nesting habitats for ground nesting birds and nesting sites likely to arise from hedgerow removal. Temporary displacement of bird species associated with increased noise activity and visual disturbance could reduce bird numbers nesting close to the works. The ES also considered indirect potential impacts on nightjar (*Caprimulgus europaeus*) because lighting might disturb their night time mitigation routes. The results of the assessment are reported under the HRA chapter 5 of this report because a potential risk to nightjar, at European sites was identified.
- 4.205 The mitigation relevant to nightjar set out in the applicant's ES (APP-081) is secured through the outline ELMP (REP-497), the preparation and submission of which is specified in the recommended Order through Requirements 28 and 29 (in the National Park) and through Requirements 39 and 40 (in the National Park) which address the restoration of land temporarily used for construction. The relevant mitigation comprises vegetation removal where necessary outside the March to July nesting season, (including specific measures to require surveys and the creation of buffer zones if vegetation removal needs to be undertaken in the nesting season), grassland restoration of habitat suitable for nesting, and pre-construction surveys and ongoing liaison with the RSPB and NE.
- 4.206 NE confirmed in its SoCG with the applicant (REP-233) that it was satisfied that the measures outlined in the ES appear sufficient to avoid significant impacts upon breeding birds in general. NE commented in connection with the one nesting barn owl, that trenching works in close proximity to such nest locations for Schedule 1 birds should only be undertaken if the nests can be shown not to be in use.
- 4.207 The RSPB/Sussex Ornithological Society and the applicant agreed in their SoCG (REP-241) that all the mitigation and avoidance measures proposed by the applicant in the ES to minimise impacts to sensitive breeding birds species during construction of the onshore cable were considered to be appropriate. The SoCG did not make specific reference to the proposed substation site, but there have been no submissions in this regard and we take the appropriateness of mitigation to apply equally to this area.
- 4.208 The RSPB/Sussex Ornithological Society (REP-329) pointed out that the risk of disturbance of stone curlew nesting is high because locations change each year. However it was acknowledged that it is likely the birds will avoid areas of construction activity. It was considered that the commitment to ongoing consultation with the RSPB and NE to highlight potential risk areas and times of year is

sufficient to mitigate risk to stone curlew. The RSPB/Sussex Ornithology Society noted that there is similar potential for disturbance to nesting little egret (*Egretta garzetta*), long-eared owl (*Asio otus*) and barn owl (*Tyoto alba*), but also confirmed that the mitigation measures set out in the ES were considered sufficient.

Terrestrial (non-HRA) Ornithology: Conclusions

- 4.209 On the basis of the information submitted to us, the Panel is satisfied that the necessary controls and mitigation are in place through the requirements set out in the DCO in relation to all the terrestrial ornithology ecology matters raised during the examination. The SoS may therefore conclude that the requirements of EN-1 in relation to terrestrial (non-HRA) ornithology as set out in Section 5.3, have been met and there are no matters outstanding in that respect that would argue against confirmation of the recommended Order.

Marine (non-HRA) ornithology

- 4.210 All ornithology matters that relate to European sites are reported and relevant conclusions are presented in chapter 5 of this report. Reporting below in this chapter therefore focuses upon the examination of marine ornithological matters that fall outwith the scope of the Habitats Regulations in relation to European sites.
- 4.211 The applicant's ES (APP-068) shows that it undertook pre-application consultation with NE, the MMO and the RSPB regarding the methodology selected for its ornithological assessment. A desk study collated relevant information relating to the ornithological interest in and around the application site. Aerial and boat based surveys were also undertaken. Mean population densities and population estimates derived from both boat based survey and aerial surveys are presented for some 49 species. Bird activity and collision risk is also tabulated. An evaluation of the conservation importance of relevant species is provided.
- 4.212 The main potential adverse impacts that could occur in construction and operational phases were identified in the ES disturbance and displacement of birds from the wind farm and its surrounds, mortality through collision with the WTGs, a barrier effect diverting birds round the wind farm and changes to habitat and food supply (APP-068). The applicant argued that no mitigation is necessary to address marine ornithology impacts, and that the wind farm design would minimise the footprint of the WTGs. No residual impacts were predicted.
- 4.213 The assessment of cumulative impacts that could occur during the construction phase refers to concurrent piling activities for the Navitus Bay OWF project, which might have an indirect effect on fish prey species. Mitigation to address the risk of such cumulative

impact has been considered in the marine mammal and fish sections in this report's discussion of marine ecology.

4.214 Representations received from the RSPB and NE regarding the marine ornithology section of the applicant's ES (APP-068) raised two principal concerns:

- inadequacies of data in relation to consideration of cumulative impact at a biologically meaningful scale¹⁶ (for EIA) regarding seabirds unrelated to SPAs that pass through the Rampion OWF area and
- the impact of collision mortality upon kittiwake and herring gull features at the Brighton to Newhaven Cliffs SSSI.

These concerns were raised in the RSPB's relevant representation and repeated in the SoCG with the applicant (REP-181 and REP-241) and in NE's relevant and written representations (REP-152 and REP-297).

Cumulative impact for EIA purposes

4.215 The SoCG between the applicant and NE (REP-233) confirmed the parties disagreement regarding the applicant's EIA conclusions that there was no agreement that the predicted cumulative bird mortality figures are low, that the resulting cumulative impact is negligible and that the NE/RSPB comments on the draft ES had been addressed. Having referred to the need for assessment at the appropriate population scale in its relevant representation (REP-152), NE commented in its written representation that '*The assessment of each species needs to be at the appropriately defined minimum population scale, and having defined that scale should include all relevant wind farms... For example if the breeding population bordering the North Sea is to be considered then all wind farms on the UK east coast (and English Channel) as a minimum should be considered. If cumulative impact on the entire UK population is to be considered then all wind farms round the UK should be considered*' (REP-297). NE argued that the data presented for the assessments in the ES were inadequate and continued to call for cumulative assessment of collision mortality at a biologically meaningful scale (REP-349). Its inadequate assessment critique was in relation to the following species:

- Lesser black-backed gull (*Larus fuscus*)
- Great black-backed gull (*Larus marinus*)
- Herring gull (*Larus argentatus*)
- Kittiwake (*Rissa tridactyla*)
- Great skua (*Stercorarius skua*)
- Gannet (*Morus bassanus*)
- Common tern (*Sterna hirundo*)
- Arctic tern (*Sterna paradisaea*)

¹⁶ See explanation in paragraph below

4.216 The applicant presented further cumulative assessment in its document entitled 'Additional Ornithology Work to address NE's Written Representation' (REP-475). In this document, the applicant presented data and commentary, arguing on a species by species basis that the increase over Biologically Defined Minimum Population (BDMP) baseline mortality (as requested by NE) is little changed by the addition of the mortality associated with the Rampion OWF, and therefore that any contribution from Rampion would not be significant. The findings were set out in Table 2 in the additional ornithology work. A precis which sets out the BDMP and BDMP baseline mortality and takes the difference in percentage increase over baseline mortality with and without Rampion OWF is set out below in Table 4.1.

Table 4.1 Cumulative collision risk assessment results as assessed by the applicant

	BDMP	BDMP baseline mortality	Difference in % increase over BDMP between baseline mortality with and without Rampion @ 98% AR	Difference in % increase over BDMP between baseline mortality with and without Rampion @ 99% AR
Gannet	265,000	44,496	0.4	0.2
Great skua	48,000	2,992	0.1	-
Kittiwake	1,220,000	194,552	0.2	-
Lesser black-backed gull	351,000	11,250	0.3	0.1
Herring gull	1,280,000	153,600	0.4	0.2
Great black-backed gull	153,000	16,830	0.7	0.3
Common tern	100,000	19,226	-	0.05
Arctic tern	100,000	16,890	0.1	0.1

4.217 The applicant argued that because none of the increases over baseline mortality when predicted against the BDMPs were greater than 1% (refer to Table 4.1), collision risk modelling (CRM) was not necessary to determine magnitude of impact. The applicant then considered the figures above and made an assessment of magnitude of cumulative effect and significance of change, through the addition of the Rampion scheme.

Table 4.2 Magnitude and significance of change as assessed by the applicant

	Magnitude of cumulative effect as assessed by applicant	Significance of change through as assessed by applicant
Gannet	Low	Not significant
Great skua	Low/negligible	Not significant
Kittiwake	Low/negligible	Not significant
Lesser black-backed gull	Negligible	Not significant
Herring gull	Not stated	
Great black-backed gull	Medium/low Could be significant	Not significant
Common tern	Negligible Not significant	Not significant
Arctic tern	Low/negligible	Not significant

4.218 The RSPB/Sussex Ornithological Society accepted that the Rampion OWF contribution to gannet mortality over baseline mortality would represent only a small increase, although they did not agree the Rampion contribution would be insignificant, nor that the increase over baseline mortality for kittiwake due to Rampion's effects would not significant (REP-510). It was also suggested that the applicant's surveys had failed to capture data relating to large 'pulses' of migrant birds, specifically great and Arctic skua; and that this omission had led to underestimation of mortality (which was shown only as two bird deaths by the applicant's assessment). The RSPB/ Sussex Ornithological Society did accept that modelling for these species would produce a collision risk that would not be significant (REP-554).

4.219 NE was satisfied that the applicant had conducted the cumulative assessment in an EIA context as agreed (REP-507). In the absence of what it considered to be a satisfactory assessment by the applicant, NE indicated that it intended to present its own assessment of kittiwake and gannet at the next Biodiversity ISH. NE advised that it could not be concluded that a cumulative level of mortality up to and including Rampion OWF will not have an adverse effect on the North Sea populations of kittiwake, lesser black-backed gull and great black-backed gull and the UK East Coast population of gannet. In view of NE's concerns, those species were taken forward for further modelling and discussion during the later stages of the examination.

4.220 The applicant presented further evidence in its document 'Additional Clarification on Ornithology' (REP-576), which responded to action points agreed at the end of the Biodiversity ISH on 4 December 2013. In this document the applicant used Potential Biological Removal (PBR) modelling as suggested by NE. PBR modelling seeks to determine levels of incidental mortality

that will not lead to population decline, setting upper and lower thresholds for mortality through use of different population recovery factors. If the upper threshold is exceeded, a significant adverse effect can be concluded. If the lower threshold is not exceeded then no significant adverse effect can be concluded.

- 4.221 The applicant included tables to demonstrate the cumulative assessment of the North Sea populations using its approach to ordering wind farms¹⁷. The applicant's cumulative assessment adopted a 'building block'¹⁸ approach, which as presented excludes 'planned'¹⁹ projects with the exception of the East Anglia One and Rampion OWFs. The applicant also presented collision data that were based on avoidance rates of 98% and 99% for gannet²⁰.
- 4.222 The applicant maintained that no upper thresholds were exceeded and that the only species for which a lower threshold would be exceeded would be the great black-backed gull. This can be seen on Table 4.3 below. The applicant drew the conclusion that cumulative assessment of the proposed Rampion OWF assessed together with other OWFs in the North Sea and English Channel would not have a significant effect on the relevant populations of gannet, kittiwake and lesser black-backed gull and that the only species for which a lower threshold would be exceeded would be the great black-backed gull.
- 4.223 In its final submission (REP-630) NE pointed out, that if as it had suggested, the cumulative collision mortality calculation included those collisions predicted from all other wind farms which are currently submitted to the relevant authorities in either England or Scotland, which would include the Hornsea One and Dogger Bank Creyke Beck OWFs then the position in relation to PBR thresholds would be as follows:
- For kittiwake both upper and lower thresholds would be exceeded;
 - For gannet (when using 98% avoidance rate) both upper and lower thresholds would be exceeded and when using 99% avoidance rate the lower threshold would be exceeded but not the upper threshold and

¹⁷ The order in which wind farms are organised for calculating cumulative mortality is a point of disagreement between applicant and NE, which is explored in more detail in the HRA Chapter 5. NE presented wind farms ordered into tiers based on the application submission dates; the applicant used the date consent was received or is likely to be received.

¹⁸ A building block approach takes cumulative bird mortality figures predicted for wind farms on the basis of the perceived certainty of the project and its timing. The applicant's building block approach takes wind farms consented before Rampion OWF, and East Anglia One OWF.

¹⁹ 'Planned projects' are projects (offshore wind farms) within the planning process yet to be consented and projects for which the regulatory bodies are expecting an application to be submitted (eg any project included within the PINs programme of NSIPs as a result of the prospective applicant serving notice of a proposed application under s46 of the PA2008). These are defined by NE as Tier 4 and Tier 5 (REP-582).

²⁰ A further point of disagreement between applicant and NE is what % figure to use in the predicted gannet mortality figures to allow for birds taking action to avoid WTGs. This is explored in more detail in the HRA chapter 5 of this report.

- For great black-backed gull both upper and lower thresholds would be exceeded.

4.224 The ExA has prepared Table 4.3 below to illustrate the points discussed above in relation to the two scenarios considered (ie the applicant's final position and NE's final position). Table 4.3 illustrates how the mortality figures derived from these different scenarios compare with the upper and lower PBR thresholds. The sources for this table are as follows:

- applicant's Appendix 15 ornithology clarification, Tables 8, 9, 11 and 12 (REP-576)
- NE Annex A Gannet in combination assessment (REP-513)
- NE Annex B Kittiwake in combination assessment (REP-514)
- NE Explanation of Tables (REP-582)
- NE Response to RIES (REP-594)
- NE Rule 17 of 18 January 2014 response (REP-630)

Head room as indicated in Table 4.3 means the difference between the (upper or lower) PBR threshold, less the adult mortality figure. If negative this means the threshold would be exceeded.

Table 4.3: Cumulative mortality for North Sea populations in relation to PBR thresholds for different scenarios

Description	AR	Upper / lower threshold range	Predicted cumulative mortality	Head-room below lower threshold	Head-room below upper threshold	Rampion adult mortality
Gannet		1576 - 4225				
Applicant's ordering + building block	98%		1410	166	2815	185
Applicant's ordering + building block	99%		705	871	3520	93
NE up to Rampion + Dogger Bank CB + Hornsea 1	98%		6165	-4589	-1940	185
NE up to Rampion + Dogger Bank CB + Hornsea 1	99%		3083	-1507	1142	93
Kittiwake		3577 - 7154*				
Applicant's ordering + building block	98%		1757	1820	5397	108
NE up to Rampion + Dogger Bank CB + Hornsea 1	98%		7663	-4086	-509	108
Lesser black-backed gull		6318-10530				
Applicant's ordering + building block	98%		1873	4445	8657	31
NE up to Rampion + Dogger Bank CB + Hornsea 1	98%		2072	4246	8458	31
Great black-backed gull		832 - 2495				
Applicant's ordering + building block	98%		1873	-1041	622	104
NE up to Rampion + Dogger Bank CB + Hornsea 1	98%		3025	-2193	-530	104
*applicant figure is 7664 (REP-576 Table 11). We believe NE's (shown) to be correct and applicant's to be a transcribing error						
KEY Negative figure means PBR exceeded.						

4.225 NE's comments regarding these findings (REP-594) are set out in Table 4.4 below. NE noted throughout that should the SoS be minded to adopt the applicant's 'building block' approach then conclusions of no significant adverse effect can be concluded for all species apart from great black-backed gull where additional figures have not been presented. The Panel has included figures in Table 4.3 from NE's submission (REP-630), which showed the upper and lower thresholds, and which indicated the applicant's mortality figure for great black-backed gull falls between the upper and the lower PBR thresholds. The applicant's final submission regarding this point (REP-632) was that a significant cumulative impact on this species cannot be ruled out whether or not the Rampion project is constructed. It argued that the addition of the small amount of great black-backed gull mortality from Rampion OWF would make no material difference to the overall cumulative impact.

Table 4.4: Natural England's commentary on cumulative impact (REP-594)

	Applicant's ordering + building block approach	NE's ordering in building block approach up to + including Rampion	NE's ordering + all planned wind farms
Gannet	No significant adverse effect on N. Sea population with either threshold	Upper threshold exceeded with 98% AR, lower threshold exceeded with 99% AR = significant adverse effect.	Upper threshold exceeded with 98% AR, lower threshold exceeded with 99% AR = significant adverse effect.
Kittiwake	No significant adverse effect on N. Sea population with either threshold	Upper threshold exceeded = significant adverse effect	Upper threshold exceeded = significant adverse effect
Lesser black-backed gull	No significant adverse effect on N. Sea population with either threshold		Upper threshold exceeded = significant adverse effect.
Great black-backed gull	No revised figures provided (previously stated lower threshold would be exceeded would be the great black-backed gull)		Upper threshold exceeded = significant adverse effect.

4.226 The applicant's additional ornithology document confirmed the applicant's position that the Rampion OWF *'will not make any significant contribution to any significant cumulative ornithological*

impact.' (REP-620). This position was re-stated in response to ExA questions included in the Panel's final Rule 17 letter (PD-008) in which the applicant provided a visual summary of the cumulative collision risk assessment for key seabird species. The applicant demonstrated, based on its approach, that the inclusion of the Rampion OWF contribution in the cumulative collision risk assessment did not affect whether or not the lower and upper PBR thresholds were exceeded (REP-632 and REP-641).

- 4.227 The difference remaining between NE and the applicant at the end of the examination was whether the proportional incidence of collision risk, which was agreed to be low, leads to the conclusion that the cumulative impact is negligible. NE did not accept that the collision risk is *de minimis* (ie too small to be concerned with) in relation to some of the above mentioned species, namely gannet, kittiwake, lesser black-backed gull and great black-backed gull (REP-575). The Panel notes that in the final update of the applicant's and NE's SoCG this point remained as a difference of professional opinion and as a matter not agreed between the parties (REP-575).
- 4.228 In highlighting this difference of opinion, the applicant referred to the absence of strategic guidance²¹. The Panel has taken this reference to refer only to guidance regarding which other wind farms should be deemed appropriate for inclusion in the cumulative assessment in calculating the figures used to predict the cumulative mortality.
- 4.229 In relation to great black-backed gull the lower threshold would be exceeded. In that regard after due consideration of the information presented to the examination including points made by all relevant parties, the Panel concurs with the applicant's position, which is that the addition of Rampion OWF does not tip the balance in terms of exceeding a threshold that would not otherwise be exceeded.
- 4.230 In reaching this position, the Panel's approach and recommendation regarding how the SoS might approach the cumulative assessment is explained in detail in chapter 5 of this report under the heading 'HRA matters in relation to in combination assessment'. That section of the report records the applicant's and NE's views regarding parameters that affect the collision risk modelling and indicates what the Panel considers to be the most appropriate approach to conclude the in combination assessment. Although using a different logic, the summation of the mortality figures generated using the method the Panel proposes results in the same figures as those generated by the applicant's 'building block' approach, which can be seen in relation to cumulative impact on Table 4.3.

²¹ NE's submissions on this point are referred to in the HRA chapter 5 of this report.

4.231 The applicant's arguments put forward to undertake the calculations are the same for HRA and EIA. The Panel's approach to the assessment draws upon a different assessment rationale from that of either the applicant or NE. It is based on a fundamental premise that government decision making is heavily constrained by European and UK law and that it will be lawful. Nevertheless whilst the figures generated from our suggested approach derive from a different rationale, they match those of the applicant's 'building block' approach. That being the case, we recommend the SoS may conclude there are no outstanding or unresolved matters in relation to cumulative marine ornithology effects that would argue against the Order being made.

Brighton to Newhaven Cliffs SSSI

4.232 The applicant's ES (APP-068) notes that this SSSI is primarily a geological site, but the SSSI citation shows that it also accommodates small breeding populations of fulmar, kittiwake and herring gull. NE raised concerns that further modelling work was required before a conclusion of no significant effect on this site could be reached because no assessment of collision risk impacts upon kittiwake and herring gull had been undertaken (REP-152 and REP-297). NE included citation material including conservation objectives for the SSSI. Notes contained within this stated '*The Kittiwake colony is in decline but the birds appear to be moving to the recently established colony at Seaford (within the Seaford to Beachy Head SSSI). Therefore it may be better to monitor both colonies together and aim to maintain 75% of the population at both sites as a minimum for favourable condition at both sites (the colonies are only two miles apart).*' (REP-297).

4.233 The applicant made a commitment to further cumulative assessment in its response to NE's written representation (REP-355). The data are presented in the applicant's document: 'Additional Ornithology Work to address NE's Written Representation' (REP-475). Based on breeding season collision risk of 64 collisions per year, the applicant argued that 11 birds from the Brighton to Newhaven SSSI would be affected when apportioned between this and the adjacent kittiwake colony at Seaford Cliffs, also within the mean maximum foraging range of the Rampion OWF site. But also the applicant noted that the surveyed numbers of kittiwake present far exceeded the populations associated with those two colonies. It is estimated that 4,950 kittiwake would be in the mean maximum foraging range of the SSSI; and therefore a very large proportion of the Rampion OWF breeding season collision risk would be on non-SSSI birds. Likewise the applicant refers to numerous other herring gull colonies within the mean maximum foraging range, giving a population estimate within the mean maximum foraging range of the SSSI of 53,000. The applicant concluded that a large proportion of the breeding season collision risk from Rampion OWF for both kittiwake and herring gull would fall upon non-SSSI birds

and that the residual risk to the SSSI population would be of negligible magnitude and not significant (REP-475).

- 4.234 In response to the applicant's work, the RSPB/Sussex Ornithological Society (REP-510) stated with regard to kittiwake that its main concern remained the impact on the non-designated but regionally important kittiwake colony at Seaford Head. The RSPB/ Sussex Ornithological Society argued that monitoring of the kittiwake colony should be made a condition of any consent granted. This case was reiterated at the Biodiversity ISH and in the RSPB/ Sussex Ornithological Society summary of the hearing (REP-554).
- 4.235 Following actions requested at the Biodiversity ISH, the applicant presented further collision risk mortality figures for herring gull and kittiwake using PBR modelling. The applicant's assessment concluded that there would be no significant effect upon the breeding populations of either species as a result of the Rampion OWF because the PBR would not be exceeded. The applicant set out the calculations and justified the use of the recovery factors applied because both species are of low vulnerability and increasing in numbers in the region (REP-576).
- 4.236 In its response to the applicant's clarification on marine ornithology, NE stated (REP-594) that it was satisfied with the work done on the Brighton to Newhaven and Newhaven to Seaford Head to Beachy Head SSSIs (collectively referred to as Newhaven to Seaford Head SSSIs) and that the conclusions drawn were reasonable for a site-based assessment. However NE supported the RSPB's suggestion regarding monitoring of kittiwake and herring gull at the breeding colonies. The applicant acknowledged this point, but maintained its position in relation to monitoring *'that this is neither necessary nor reasonable, given that no likely significant effect is predicted'* (REP-620).
- 4.237 In light of NE's agreement of the conclusions of the applicant's assessment, the Panel agrees with the applicant's position in this regard. We find that whilst monitoring might provide the RSPB and others with useful data, there is no clear justification for mitigation of the effects of the proposed wind farm upon the Brighton to Newhaven SSSI (or the Seaford to Beachy Head SSSI) seabird colonies. Having regard to this finding the Panel concludes that none of the points raised by the RSPB and NE in relation to the Brighton to Newhaven Cliffs SSSI would point either to any reason for refusal of the application or to any need for the inclusion of specific provisions within the recommended Order.

Marine (non-HRA) ornithology: Conclusions

- 4.238 The applicant's ES found no significant residual effects associated with operational or decommissioning phases. The mitigation and residual effects associated with construction phase have been

described above. The applicant considered other planned development in the vicinity of the proposed development and concluded that no significant cumulative impacts would arise. This conclusion was not disputed during the examination apart from two exceptions. The first exception was in connection with the need for an agreement with the promoters of the Navitus Bay OWF regarding the management of any potential cumulative effects upon marine mammals and fish arising from overlapping piling programmes. Whilst primarily related to non-ornithological matters, this mitigation would also be relevant to prey species and therefore provide a degree of mitigation for the food supply of relevant marine wild birds. The second exception related to the differences of opinion over cumulative assessment of marine ornithology effects described above.

- 4.239 The Panel is of the view that the possible cumulative effects, particularly with regard to prey species, which may arise with the proposed Navitus Bay OWF can be mitigated by the agreement between the applicant and the Navitus Bay promoters. The applicant and Navitus Bay developer have agreed to share information and specific measures through the production of MMMPs in the event that the construction phases overlap. The production of an MMMP for this project is secured by Condition 11(f) Schedule 13 and must be agreed by the MMO.

Overall conclusion on biodiversity

- 4.240 Matters relating to habitats, species and sites have been considered and examined. Certain of these matters may also be considered in different contexts in other sections or chapters of this report. For example, the ornithological effects of the Rampion project are considered in relation to the Habitats Regulations Assessment in chapter 5 and certain matters relating to chalk grassland and the project's potential landscape and visual impact upon the National Park are considered later in this chapter.
- 4.241 With regard to the SoS's duties in relation to nationally protected species and conservation of biodiversity under the Natural Environment and Rural Communities Act 2006 (NERC), the Panel is satisfied there are no matters outstanding in connection with the protected species and habitats identified and assessed on and near the land based elements of the wind farm that would argue against the recommended Order being made. The Panel considers that the biodiversity mitigation that would be secured through the recommended Order demonstrates that due regard has been given to the purpose of conserving biodiversity as required under s40 of the NERC Act.
- 4.242 We have no reason to believe that the licences will not be granted by NE as no parties gave any indication that EPS licences would not be granted if and when required under the Wildlife and Countryside Act 1981.

- 4.243 Finally the Panel is satisfied that the necessary controls and adequate mitigation are in place through the requirements and conditions included within the recommended DCO and DMLs in relation to all the biodiversity matters raised during the course of examination. Accordingly the SoS may conclude that the policy requirements of EN-1 and EN-3 have been met and there are no outstanding biodiversity matters that would preclude the recommended Order being made.

Effects during Construction and Operation

- 4.244 This section of the report discusses potential construction and operational effects of the proposed project including matters of good design onshore and addresses the closely related issue of sources of nuisance and how they may be eliminated, controlled or otherwise mitigated. Effects of construction and operation upon the marine environment and upon biodiversity are addressed in the biodiversity section of this chapter. Good design in relation to the offshore wind farm is discussed in the section on landscape and visual impacts and in other matters.

Statutory nuisance matters

- 4.245 Section 4.14 of NPS EN-1 explains that s158 of the PA2008 confers statutory authority for carrying out development consented to by, or doing anything else authorised by, a development consent order. Such authority is conferred only for the purpose of providing a defence in any civil or criminal proceedings for nuisance. Accordingly the Panel has considered carefully possible sources of nuisance under s79(1) of the Environmental Protection Act 1990 and how they may be mitigated or limited. In the case of this particular DCO the applicant has limited the scope of the defence available to considerations of noise and vibration only. Article 14 of the recommended Order sets out the detail of the defence sought.

Noise from onshore activities during construction and operation

- 4.246 From the noise assessment provided in the applicant's ES (APP-084) and from the applicant's oral submissions at the ISHs the Panel finds that a range of construction noise and vibration sources could arise from the onshore export cable corridor construction activities, including for example horizontal directional drilling (HDD) operations, generator noise, noise generated by vehicle movement and loading and unloading. For the substation element of the project there could be more intensive and extended construction noise resulting from the large number of HGV movements to and from the site, site clearance, earth moving, landscaping, fencing and surfacing operations, the erection of buildings, drainage and access arrangements and the installation

of transmission apparatus, lighting and other necessary equipment.

- 4.247 Concerns regarding the potential effects of noise, vibration and disturbance arising from the proposed project, in particular from the construction related activities likely to take place during the construction phase of the project, were raised by a number of interested parties, including residents living near to the proposed site of the onshore substation near Bolney and by Twineham Parish Council (for example written representations REP-276, REP-287, REP-289, REP-296, REP-298, REP-303).
- 4.248 Apart from the concerns raised in relation to the substation element of the project it was confirmed in the applicant's noise assessment in the ES and from the Panel's accompanied and unaccompanied site visits that there would also be potential in other locations along the proposed onshore cable corridor route for activities such as the horizontal directional drilling, vehicle movements, use of generators and a variety of other construction activities to also create localised noise and disturbance during the construction phase.
- 4.249 It appeared from all the relevant information available to the Panel including the ES noise assessment and from the accompanied site visit (which included external inspection of the existing National Grid substation near Bolney) that operation of the proposed new Rampion onshore substation near Bolney would in general be relatively quiet, in that any inherent operational noise would be associated with the electrical apparatus installed within the substation compound (either inside buildings or within the compound curtilage) and would be at such a low level that it would be unlikely to give rise to any significant adverse effect or nuisance. This finding does take into account the proximity of noise sensitive residential properties located some hundreds of metres from the proposed substation boundaries and the fact that the otherwise rural setting provides a reasonably peaceful acoustic environment, as the Panel appreciated on its accompanied and unaccompanied site visits to the proposed substation site and its environs.
- 4.250 Having regard to the information referred to above it did, however, appear to the Panel from the content of the ES including the noise assessment (APP-084) and from our site visits that there could be a risk that occasional maintenance work on the substation could give rise to potential for noise and disturbance from time to time, in particular if there was a need to replace any large components, but that such occasions would be infrequent.
- 4.251 The Panel notes that the adequacy of the applicant's noise assessment relating to the onshore elements of the development was not challenged by either the local authorities responsible for regulation of potential nuisance or by any other interested party.

The Panel has considered the submitted noise assessment and sees no reason to doubt that the assessment of the relevant construction and operational effects set out in the ES, including the assessment of potential noise and vibration effects, is robust.

- 4.252 On the basis of the evidence submitted to the examination by the applicant and other parties (including the noise assessment included in the applicant's ES, comments made by local authorities in the LIRs, eg the Joint Council's LIR REP-226, and points made by Twineham Parish Council and a number of interested parties living in relatively close proximity to the proposed substation site), it is clear that the most significant sources of noise and vibration likely to affect humans would tend to be construction-related. Having regard to the applicant's proposed programme of construction, the applicant's assessment (APP-084) indicates that works giving rise to sources of noise and disturbance would tend to be of relatively short duration, eg a period of up to a few weeks in any one location along the cable corridor, as they would be related to the period of construction rather than the period of operation. This would include periods of horizontal directional drilling (HDD) operations of up to a maximum of 13.5 weeks.
- 4.253 The information contained in the ES noise assessment indicates that the greatest impacts could arise on connection with construction works under the A259 in East Worthing between between the landfall point and around the compound at Worthing Park, at crossings of the south coast railway line north of the Park, under the A27 Sompting Bypass and under the River Adur and A283 south of the former Shoreham cement works, at the compound close to Tottington Mount and in the area immediately around the substation proposed at Bolney. These locations would include the more substantial construction compounds and the sites of the most significant HDD works.
- 4.254 The Bolney site would provide not only a compound to serve the cable corridor but works to develop the substation that would extend up to around 28 months as a result of the scale of construction involved in providing that facility. In addition the lengthy period of operation of the substation (for at least the estimated 20-25 years life of the Rampion OWF) might be accompanied by occasional maintenance at the Bolney substation and elsewhere along the cable corridor that might give rise to potential for noise or other nuisance.
- 4.255 The ES noise and vibration assessment (APP-084) indicates that potential construction effects specific to the onshore cable corridor would include short term excavation works and related disruption to parts of Worthing Park (Brookland Pleasure Park), including the golf course and pitch-and-putt areas. A temporary construction compound would be established for the duration of the works in the area currently occupied by the pitch-and-putt facility. A limited number of objections to the construction effects of the works in

this area were received, including an objection to the disruption of the municipal golf course anticipated by a user of that facility.

- 4.256 The ES noise assessment also indicates that horizontal directional drilling under the Brighton-Worthing coast road (A259) would create a level of additional noise and vibration to that generated by the coast road, but this would be short-lived and unlikely to affect nearby residential properties significantly. The same is said of other HDD operations proposed under the Brighton-Worthing railway, the A27 Sompting bypass, and the River Adur. No site-specific objections were received in relation to the construction or operational effects of this section of the onshore works other than the objection by GSK. The construction risk presented by the proposed Rampion project works to two PVCu effluent pipelines owned by GSK is considered in more detail in the compulsory acquisition chapter 7.
- 4.257 The Joint Council's LIR (REP-227) raises concerns regarding the risk of noise impacts upon residential properties near to the works, especially in relation to the location and periods of HDD works. However the Panel notes that the local authorities did not contest the methodology or accuracy of the noise assessment and that none of them raised any specific concerns regarding the provisions of the order regarding noise mitigation or control of noise during construction (Requirement 35), once the applicant had agreed amendments to hours of working.
- 4.258 Having regard to all the information available to the Panel regarding this topic, and in the absence of any challenge to or criticism of the methodology or its results, the Panel accepts the findings of the ES noise and vibration assessment (APP-084).
- 4.259 The Panel concludes that noise and vibration along the onshore cable corridor would be likely to represent the most significant effect during the construction phase. However, following the applicant's amendments to hours of working (discussed below), and in the absence of any further objections from the local authorities with responsibilities for the control of environmental health and statutory nuisance matters, the ExA further concludes that none of the noise and vibration effects would be of such magnitude following application of mitigation measures sought under the Order as to justify refusal of the application.

Working Hours

- 4.260 Amongst the concerns raised by local residents and Twineham Parish Council was hours of working during the construction phase. The Panel considered this to be a relevant and important matter and invited comments in its written questions. WSCC in its Joint LIR with other relevant authorities (REP-226) and other submissions, together with Twineham Parish Council and a number of local residents, all sought various changes to restrict the

construction hours beyond the applicant's initial provision at Requirement 32 of the submitted draft Order. Following discussion during the examination the applicant agreed to the exclusion of construction activity on public holidays and also at Requirement 35(d) agreed to the restriction of certain construction activities related to the substation to within the hours of 0800 and 1800 Monday to Friday and between 0800 and 1300 hours on Saturday. However, the applicant did not agree to a reduction in construction hours overall.

4.261 Except for the substation, where more restricted hours apply as indicated above, Requirement 32 of the recommended Order now provides for construction hours between 0700 hours and 1900 hours Monday to Friday and between 0800 hours and 1300 hours on Saturday, with no activity on Sundays, public holidays or bank holidays, save that:

- where continuous periods of construction work are required, such as concrete pouring or directional drilling and the relevant authority has been notified 72 hours in advance of those works;
- for the delivery of abnormal loads to the connection works which may cause congestion to the local road network and the relevant highway authority has been notified 72 hours in advance of those works;
- where works are being carried out to the foreshore and
- as otherwise agreed by the relevant authorities in advance and carried out within the agreed times.

4.262 In the light of the applicant's modification of the proposed hours of working, the Panel is satisfied that, subject to the controls over hours of working now included in the recommended Order, the provisions in the Order in relation to hours of working strike a reasonable balance between ensuring completion of the project within a realistic timescale and safeguarding the amenity of local residents living close to the proposed works.

Landscape effects of onshore construction

4.263 Between the Brighton-Worthing Railway and Tottington Mount the cable corridor is proposed to be constructed through agricultural land by means of conventional trenching techniques (apart from the HDD drives mentioned above). At Tottington Mount the area of works for the cable corridor would narrow from 30 metres working width (allowing an additional 10m for micro-siting tolerance) to 20m and the construction technique would be changed through the use of specialist techniques and equipment in order to mitigate as far as may be practicable the effect upon the Scheduled Ancient Monument (SAM) and its setting. Concerns raised by interested

parties in relation to the landscape and biodiversity effects of construction in this area are discussed in this chapter.

- 4.264 Between Tottington Mount and the onshore substation near Bolney the cable corridor works resume the traditional trenching techniques and cut across agricultural land. No site-specific concerns were raised regarding this section of the route.
- 4.265 The effects of construction upon landscape and biodiversity, including the removal of trees and hedgerows (including some sections of important hedgerows) are considered in the sections on landscape and biodiversity. The Panel considers that these effects would be localised as a result of the restricted working width of up to 40m provided by the Order Limits. Provisions made in the recommended Order including Requirements 28 and 29 (Ecological and Landscape Management Plan for areas outwith and within the SDNP), such as provision for submission of a hedgerow management plan and an arboricultural method statement, would assist in minimising the adverse effect and encourage recovery of the landscape after project implementation, as would the measures provided for in the s106 agreement in favour of WSCC and the UU in favour of the SDNPA.

Construction and operational effects of the proposed onshore substation near Bolney

- 4.266 A number of interested parties raised concerns regarding the likely construction effects of the onshore substation proposed for a site located in the parish of Twineham near Bolney. The proposed new onshore substation would be located immediately to the east of a large existing 400kV substation owned by National Grid Electricity Transmission Ltd (NGET), which covers an extensive area. The proposed substation compound is located to the east of NGET's substation and would eventually be owned and operated by an Offshore Transmission Owner (OFTO). The key components of the compound would be: electrical plant (eg super grid transformers, reactive compensation equipment, filters, switchgear and auxiliary transformers), HV cables, E.ON control building, OFTO control building, site roads, hardstandings, car parking, fencing and access road.
- 4.267 The proposed onshore substation is a key component of the project proposals. It would be required to convert electricity generated at the offshore wind farm to a higher voltage suitable for onward transmission to NGET's electricity transmission system.
- 4.268 Located in and around the proposed onshore substation site for the Project are three existing overhead line circuits which help to set a boundary for the development. They consist of the following:
- an 11kV overhead line running north to south through the middle of the proposed site supplying electricity to nearby

farms and local residential properties, which the applicant indicates in its Onshore Substation Design and Access Statement (DAS) (APP-180) would need to be diverted;

- to the south of the proposed site, a 132kV overhead line running west to east which is connected into the existing Bolney 132kV substation by a cable circuit with two 132kV towers sited just outside the proposed site and
- to the north of the site, a 400kV overhead line double circuit and single tower connected into the existing Bolney 400kV substation running west to east. An underground cable circuit has recently been installed through the site to the east of the NGET compound and to the west of the 132kV terminal tower located in the west of the site.

4.269 The new onshore substation would be designed to be unmanned during operation. The DAS indicates that the site is likely to have a main palisade security fence with an electric pulse fence installed behind and extending 1m above this fence. CCTV would facilitate remote observation capability 24 hours a day. On this basis the development would not require day to day access and would not be open to the public.

Design considerations in relation to the proposed Bolney substation

4.270 Residential properties owned and occupied by a number of the interested parties who objected to the proposed new Rampion onshore substation are located within view of the site. The 1:10,000 Ordnance Survey map suggests that the nearest residential properties are at and adjoining 'Coombe House' and 'Dawe's Farm' to the north, of which the curtilage of 'Coombe House' and related properties is the nearest, some 190-200m distant from the northern edge of the northern edge of the Onshore Development Area (Fig 2b.1 - Onshore Development Area, Map 1 of 9).

4.271 On the Panel's accompanied site visit it was noted that there is a combination of trees, hedgerows and planting and a mix of walls and fencing to various parts of the boundaries to the properties in the groups based around 'Coombe House'. There are also hedgerows to the south of 'Dawe's Farm'. Existing trees and hedgerows along the west-east line of a small stream or ditch located between the residential properties to the north and the proposed onshore substation site to the south would help to screen the proposed substation site. The two substantial hedgerows incorporating a number of semi-mature and mature trees which are located within the proposed substation site and which run both west-east and north-south across it are also noteworthy. The latter were the subject of submissions in the Joint Council's LIR (from WSCC) and the wider protection of landscape features was also raised by residents of the properties nearby (eg REP-282, REP-296) and Twineham Parish Council (REP-303) who

sought retention of important screening if the Order were to be consented by the SoS.

- 4.272 Concerns were expressed in the written representations referenced above regarding the need for reinforcement of screening and effective design of the substation to minimise the visual impact of buildings and apparatus. To that end interested parties suggested that the large substation site should be partly excavated to sink the buildings and apparatus into the ground and to use the residual material to assist screening, that the height of any substation buildings should be restricted to a single storey and that their design should echo agricultural buildings and thereby be appropriate to their rural setting. Later in the examination the applicant sought to reduce the maximum height of the proposed building(s) on the site in its revised Design and Access Statement (REP-567).
- 4.273 'Old Dollards' lies to the west of the proposed substation site and northwest of the existing National Grid substation, approximately 50m from the western edge of the Onshore Development Area. Although over 450m away from the bulk of the proposed substation, a narrow transmission corridor would extend out from the new substation immediately to the north of the existing substation in order to facilitate connection to the national grid. There are already two existing transmission line pylons to the edge of this area, on the northern boundary of the existing NG substation.
- 4.274 There is good screening by trees and a hedgerow along the eastern boundary to the curtilage of 'Old Dollards'. Although any additional transmission and connection apparatus installed to the north of the NGET substation in order to facilitate the grid connection might come within 100m of 'Old Dollards' the Panel notes that there would be only limited visual impact due to the existing screening along the boundary to this property. While the proximity of the property means that it might be vulnerable to a degree of construction noise while transmission and connection apparatus was installed, the extent of the works involved would be substantially less than for the main new substation, which would be located well over 400m to the east of the property.
- 4.275 Twineham Court Farm lies to the south of the southern Onshore Development Area boundary to the proposed substation site. The farm buildings lie some 60m away from the southern edge of the substation site. Together with a substantial tree line along the northern boundary to the farm, they would appear likely to provide an effective visual screen to the proposed substation works. However the proximity of the farm to the proposed substation site suggests that disturbance to residents and stock from construction noise and vibration effects might be more significant in this location than for some other properties in the vicinity.

- 4.276 While other residential properties along Bob Lane might be able to see parts of the proposed substation site, especially during and after construction of the proposed new office and facilities building and taller apparatus and any substantial lighting columns, any views would appear to the Panel to be likely to be limited in viewing angle, due to the position of the substation and the orientation of the principal elevations of the properties concerned.
- 4.277 Nevertheless, the Panel considered that the points made by a number of interested parties regarding the need for good design of the substation and for effective screening, merited very careful consideration, particularly given the advice on good design contained in EN-1 and EN-3. Section 2.4 of NPS EN-3 sets out the technology-specific criteria for good design for renewable energy infrastructure:
- (Paragraph 2.4.2) 'Proposals for renewable energy infrastructure should demonstrate good design in respect of landscape and visual amenity, and in the design of the project to mitigate impacts such as noise and effects on ecology'.*
- 4.278 To assist our consideration of the matter we looked at information including:
- relevant parts of the ES, including the 'Landscape and Visual Assessment' (APP-069) and noise and vibration assessment APP-084)
 - assessments made following our accompanied and unaccompanied site visits, and
 - oral and written evidence submitted during the examination, including submissions from interested parties who are residents in living in the vicinity of the substation site and representations submitted by Twineham Parish Council.
- 4.279 In response to the submissions of local residents and the parish council and ExA written questions the applicant submitted a revised Design and Access Statement (DAS) for the proposed onshore substation.
- 4.280 The Statement sets out the design principles to be followed in the design details to be submitted for approval by Mid Sussex District Council. The DAS provides information available at the time of submission (and updated during the examination) regarding the following topics:
- Use: What the buildings and spaces will be used for
 - Amount: How much will be built on the site
 - Layout: How the buildings and open spaces will be arranged on the site

- Scale: How large the buildings and spaces will be
- Landscaping: How the open spaces will be designed
- Appearance: What the buildings and spaces will look like
- Access: How access will be provided.

4.281 The DAS has been prepared in line with national guidance on DAS and the text indicates that is intended to be read in conjunction with the application plans/drawings and the ES (eg APP-059) submitted with the application. It provides that:

- The substation would be designed to mitigate noise pollution. The undertaker would, where possible, seek to locate the largest noise sources away from noise receptors. Noise mitigation/suppression would be installed where necessary.
- Taller structures would be located as far to the west of works plot 25 as possible.
- Electrical plant would be located to the west of the existing route of PRow 8T.
- The undertaker would secure a cut-and-fill balance on the substation site in order to establish a substation level below the current highest level on the site.
- The proposed onshore substation would contain a range of electrical equipment, including transformers, reactive compensation equipment and control buildings (likely to be two storeys high), segregated from the High Voltage (HV) equipment) all located within the substation boundary fence (the compound).
- The majority of the substation buildings would not be expected to be taller than 10m (and in most cases much lower) – however, some of the equipment may include bushings that extend up to 10.5m at their highest points. The maximum height of equipment and buildings is defined within the design parameters of the draft DCO.
- The proposed substation would be connected to two new 400kV feeder bays to the west of the existing NGET Bolney substation via underground cabling.
- The design principles and indicative layout illustrated in the DAS allow for ancillary control buildings to be provided for both E.ON and the Offshore Transmission Operator (OFTO). These buildings would be single storey (up to 6m high) and would be segregated from the High Voltage (HV) equipment. The adoption of single storey buildings set out in the DAS

was a revision to the worst case two storey buildings assessed in the ES.

- The design would accommodate a variety of substantial electrical equipment including transformers and busbars, fire protection measures, including water deluge tank and contamination containment under equipment that would contain oil. The substation facility would be functional in its overall appearance.
- Existing tree and shrub lines run north to south (approximately 200m) and east to west (approximately 350m) In the design of the substation site, the DAS states that the Undertaker will seek to retain as much of both tree and shrub lines as practical. The design of the substation and the protection of trees to be retained will be in accordance with BS: 5837 2012 '*Trees in Relation to Design, Demolition and Construction*'.
- An indicative landscaping strategy for the substation area, set out in Figure 26.6 in the ES (Document 6.1.26), was developed on the worst case scenario as an integral part of the overall design of the proposals, the prime objective relating to the onshore substation being to mitigate for the loss of established landscape features caused by the construction of the onshore substation. The DAS confirms that this objective would be achieved through the following measures:
 - (i) Targeted planting of trees and shrubs.
 - (ii) Physical and visual integration of the substation into the local landscape pattern, which would maintain the open aspect and general character of the existing local landscape.
 - (iii) Provision of a degree of visual softening, screening and containment around the final location of the proposed substation.

It is anticipated that the substation would take two years to build.

4.282 The applicant also provided 'before and after' photomontage images of the site and proposed substation viewed from the principal public viewpoints.

4.283 Bearing in mind the information provided and in the light of site visits, the Panel considers that the siting and dimensional parameters of the substation proposed in the application are broadly acceptable in environmental terms and that the construction impacts can be kept to an acceptable level through the environmental requirements included within the Order and through any detail control measures provided for within the Order.

- 4.284 The substation would not involve any building or structures taller than a modest agricultural building and the DAS provides an indication of the design approach to be adopted. It is accepted that the freestanding electrical substation equipment and associated infrastructure would be functional in character and appearance but there is no reason to suppose that an adequate landscape screen cannot be established, subject to approval of the relevant design by the LPA. The landscaping scheme would include consideration of whether any landform modelling is required to establish appropriate levels of screening when viewed from nearby residential properties and public footpaths.
- 4.285 The approval of design details in relation to the onshore elements of the proposed project is specified in the Order. Requirement 10 in the recommended Order specifies that no part of the onshore substation (Work No 25) '*shall commence until details of its layout, design, scale and external appearance*' have been submitted to and approved by WSCC. The provision required the details to be in accord with the principles of the onshore substation DAS and also imposes a height restriction of 10 metres upon any building located within the boundary of Work No 25. Under the provision external equipment within the Work No 25 site was also proposed to be restricted to 12.5m in height above existing ground level.
- 4.286 During the examination the wording of this onshore design requirement was amended by the applicant in response to concerns regarding the potential visual impact of the substation and in the light of further work on the design parameters for Work No 25, including refinement of the DAS. As a result, the maximum building height was reduced to 6m in height above existing ground level and a footprint restriction of 560m² was imposed upon any building located within the Work No 25 boundary. External equipment located within the Work No 25 site was restricted to a maximum height of 10.5m above existing ground level.
- 4.287 The Panel considers the information provided by the applicant is clear regarding the location of the area identified for construction of the substation within the Order Limits, the indicative types of equipment likely to be installed within the substation compound and the broad design principles likely to be followed in developing the detailed design (as set out in its substation DAS). Parameters are also provided for the maximum dimensions of the substation structures and equipment.
- 4.288 The Panel has however included new drafting of one provision in the recommended Order, Requirement 11(h). This places a requirement on the applicant to justify any proposed removal of hedges and trees in relation to the proposed substation works. Although this requirement was not agreed by the applicant, it is the Panel's view that this provision is important given the maturity of trees and hedgerows in the location of the proposed substation

and their importance in providing potential screening and the value attached to these landscape features by interested parties.

- 4.289 The recommended Order provisions provide for control not only over the design of buildings and other structures but also over landscaping, boundary treatment/fencing, lighting and surfacing details and relevant drainage arrangements. It is therefore considered that the requirements set out in the recommended Order provide for the necessary level of control over detailed design in order to protect residential amenity and to mitigate the effects of the substation upon the rural landscape.
- 4.290 The Panel is satisfied that the recommended Order and supporting documentation including the applicant's substation Design Statement provides the basis for a satisfactory design solution when considered against the criteria for good design set out in Section 4.5 of NPS EN-1.

Mitigating the principal effects of onshore construction and operation

- 4.291 The key mitigation provisions relevant to mitigation of construction and operational effects are as set out below. Provision is made in the recommended Order for provision and control of temporary vehicular and pedestrian access to and around the proposed construction works (Requirements 13 and 15), temporary fencing around works and construction compounds proposed to be located outside and within the South Downs National Park (Requirements 17 and 18), mitigation and management of risks associated with crossing of the landfill site at Worthing Park (Brooklands Pleasure Park) (Requirement 21), control of flood risk and water quality risks associated with storage of construction-related materials (Requirement 22), provision and regulation of water crossings (including diversion and reinstatement) (Requirement 27), regulation of construction hours (Requirement 32), external lighting and control of artificial light emissions (inside and outside the South Downs National Park) (Requirements 33 and 34), control of noise during construction (Requirement 35) and operation (Requirement 36), restoration of land used temporarily for construction without and within the South Downs National Park (Requirements 39 and 40) and onshore substation decommissioning on completion of the life of the OWF (Requirement 41).
- 4.292 Article 37 in the applicant's submitted draft Order provides that the undertaker may fell or lop any tree or shrub or hedgerow (including important hedgerows) within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project. During the examination there was considerable discussion

of the potential adverse effects of this Order provision upon the landscape and biodiversity of the areas within and outwith the South Downs National Park. As a result of these discussions and in response to questioning by the ExA, the applicant amended the wording of the power created by the provision to ensure that it would be subject to Requirement 28 (ecological and landscape management plan), Requirement 29 (ecological and landscape management plan for the South Downs National Park), Requirement 37 (European protected species onshore) and Requirement 38 (European protected species in the South Downs National Park). This amendment to the Order also gives effect to the Panel's insertion in Requirement 11(h).

4.293 In addition, submission of the following detailed management and mitigation plans or schemes for approval by relevant local authorities or other bodies is required:

- Construction Environmental Management Plan (CEMP) (Requirement 26), including soil management, construction air quality management, invasive species management, site waste management, measures to monitor and mitigate vibration during construction, proposals for environmental management during the operation of Work No 25 (onshore substation) and a written scheme to deal with contamination of land including groundwater within the Order limits;
- Ecological and landscape management plans (ELMP) (Requirements 28 and 29) for areas outwith and within the National Park, to contain a hedgerows management plan and an arboricultural method statement;
- Construction health, safety and environmental plan (which may include the CEMP) (Requirement 30) containing details of relevant health, safety and environmental legislation and compliance, project organisation and management, method statements and risk assessments, construction site management, communication and emergency response plan, working hours, site security, welfare facilities, local community liaison responsibilities including communications plan, minimum training requirements for site staff, temporary fences, walls or other means of enclosure outside the SDNP, environmental management, and construction laydown areas;
- Construction traffic management plan (Requirement 31), including proposals for construction vehicle routing, site accesses, the management of junctions to and crossings of the public highway and other public rights of way, the scheduling and timing of movements, in particular of abnormal load movements, temporary signs, a workforce travel plan and access routes along the highway network to construction compounds.

- Landscaping scheme for Work No 25 (Requirement 11) to include details of all proposed hard and soft landscaping works including the location, number, species, size and planting density of any proposed planting, including any trees; cultivation, importing of materials and other operations to ensure plant establishment; existing ground levels and proposed finished ground levels; hard surfacing materials; vehicular and pedestrian access, parking and circulation areas; minor structures, such as furniture, refuse or other storage units, signs and lighting; proposed and existing functional services such as above and below ground including drainage, power and communication cables and pipelines, manholes and supports; details of existing trees and hedgerows to be retained with measures for their protection during the construction period; retained historic landscape features and proposals for restoration, where relevant; implementation timetable for all landscaping works, and proposed finished heights, form and gradient of earthworks. An establishment and maintenance period of ten years after planting is also provided under Requirement 12.

- 4.294 In the light of the evidence submitted to the examination the Panel considers that the provisions for mitigation of construction and operational effects now recommended in the Order are relevant, important, proportionate and fully justified.
- 4.295 The Panel finds that there is a risk that adverse noise and vibration effects may give rise to nuisance over an extended period of time in relation to the construction of the Bolney substation. However the Panel notes from its accompanied and unaccompanied site visits that, apart from Old Dollards the residential properties likely to be most exposed to disturbance from noise and vibration effects lie 200m or more away from the proposed locations of the substation and the works access. Old Dollards is more than 400m from the principal area of the proposed new substation site but would be approximately 50m from the location of the grid connection and approximately 100m from the junction of the works access with Twineham Lane. Accordingly there could be a higher degree of disturbance to the occupants of that property than to other residential properties in the vicinity of the proposed substation site.
- 4.296 No submissions have been made by any party that the level of construction or operational noise anticipated is such that improved sound insulation is required to the dwellings in the wider vicinity of the proposed substation site, although listed properties may be single glazed and unsuitable for double glazing. The Panel also notes that the DAS for the Bolney Substation, considered in the context of Requirements 11 and 12 of the Order, makes provision for a significant belt of landscaping including mounding and tree planting to be located between the site of the proposed substation

and dwellings located to the north of that site. In the longer term it therefore appears likely that some acoustic benefits would accrue from such screening, although any mitigation from this source would be limited during early years due to the age of the trees and shrubs planted and would help to mitigate any noise generated during the operational phase rather than the construction phase of the project.

- 4.297 Other more transient potential sources of nuisance or adverse effects from construction activities identified in the ES noise assessment and during the examination included a range of noise and disturbance effects associated with the horizontal directional drilling sites and associated compounds. It was apparent that temporary potential sources of nuisance could also be associated with other areas used as compounds for storage of materials and equipment, where vehicle movements, materials handling, generator noise and general construction related activity might offer potential for noise and disturbance and for generation of dust depending on prevailing weather conditions. The Panel concludes that although these more transient effects may be adverse they would occur for relatively limited periods of time only and would be subject to the range of mitigation described earlier in this section. On this basis the Panel's judgment is that none of the effects associated with the drilling sites and compounds are likely to be so adverse as to justify refusal of the application.
- 4.298 Having regard to the mitigation proposals now incorporated into the recommended Order, the Panel concludes that none of the likely effects of onshore construction and operation are likely to be so adverse following mitigation as to justify the refusal of the application.

Onshore operational effects

- 4.299 In relation to onshore *operational* effects the main issue raised during the examination related to electro-magnetic field (EMF) effects, including cumulative effects around the new Rampion onshore substation proposed to be sited adjoining the large existing National Grid substation near Bolney. Queries regarding the measures to be adopted in order to mitigate potential adverse effects were raised by Public Health England (PHE) at an early stage in the proceedings (REP-168).
- 4.300 A SoCG was received on 6 August 2013 (REP-235) from the applicant, agreed between the applicant and PHE, outlining the general principles agreed, but stating that the wording of the requirement was still under discussion. The measures included are summarised below;
- Transmission cables are to be buried at a depth that will ensure that the 50Hz electric fields will be screened by the

ground and that the ICNRP electric field reference of 5kV/m will not be exceeded.

- The applicant is to carry out voltage and burial depth specific assessments of magnetic field emissions for the export cable circuits as well as the 400kV circuits connecting the two onshore substations to ensure that the ICNRP reference limit for public exposure to magnetic fields of 100µT is not exceeded.
- For the Rampion onshore substation, an EMF assessment will be carried out for all equipment, including air-cooled reactors if used. This assessment will inform the substation design so that all substation internal compound fencing and overall substation boundary fencing provide the necessary segregation to ensure that ICNRP reference limits for workplace and public exposure are not exceeded.

4.301 PHE wrote to the ExA (letter dated 13th August 2013) (REP-650) to confirm that it was now satisfied that appropriate measures had been proposed by the applicant. Public Health England requested that the agreed measures could be included in the scheme. However, the SoCG included with this letter was the earlier version and did not appear to have been updated. It should be noted that this letter was one of the documents published only after the close of the examination. The SoS may wish to take account of any comments received from relevant IPs as discussed in chapter 1 of this report.

4.302 The ExA notes that, despite the discussion between the parties, the wording of a requirement was not finally agreed in the SoCG in relation to the measures required to secure mitigation of EMF and a requirement was not included in any versions of the applicant's draft DCO. In view of the discussion between the parties, the request from PHE and the lack of comment by the applicant or any other party subsequent to submission of the SoCG, this omission seems likely to have been an oversight.

4.303 However the Panel notes that PHE had the opportunity to comment on subsequent draft DCOs throughout the examination, and was invited to attend ISHs on DCO matters but it did not make any further submissions on the need to include a requirement or attend ISHs.

4.304 It appears that both the applicant and the PHE were in discussion regarding a SoCG. However there is no evidence before us that a revised SOCG would be forthcoming or if agreement was reached. In the absence of any information or submissions to the contrary the Panel regards EMF effects as a public health matter and consider it important that an appropriately worded requirement should be included in the Order.

- 4.305 The Panel recommends the SoS incorporates suitable wording the Order if he considers it necessary.

Effects related to offshore construction and operational activities

- 4.306 Construction of the offshore turbine array and substation(s) would involve piling noise in addition to noise from the erection of turbines and their foundations, the laying of cables and other site activities. Piling activities could take place at night and Brighton and Hove City Council's relevant representation sought further information in order to establish whether noise likely to be generated offshore would be likely to be heard onshore. The City Council's written representation (REP-252) and LIR (REP-225) queried the potential for night time disturbance of local residents living close to the shoreline from this activity. However the summary response based on expert acoustic evidence submitted by the applicant in response to that query (REP-340) indicated that any noise effects would not be heard at the shore in most wind and sea conditions and would in any event be at such a low level due to the distance between the noise source and the shoreline that it would be unlikely to disturb residents. The local authority did not dispute that argument.
- 4.307 On the basis of the evidence before us, in particular the uncontested noise and vibration assessment included within the ES (APP-084) and the submissions made by BHCC and the applicant during the examination referred to above, the Panel accepts that noise and vibration from the installation of the array and offshore substations would be unlikely to disturb residents living close to the shoreline. The Panel concludes that none of the likely environmental effects of offshore construction and operation upon human beings are likely to be significant or sufficiently adverse as to justify refusal of the application.
- 4.308 The effects of offshore construction and operation upon biodiversity are considered earlier in this chapter. The effects of offshore construction and operation upon habitats are considered in chapter 6 below.

Landscape, Seascape and visual impacts

- 4.309 The Panel was clear that seascape, landscape and visual impact would be a principal issue in the examination of the proposals for three reasons: firstly, the location of the proposed array some 8 miles off the Sussex coast and therefore its exposure to and visibility from settlements along the coast; the South Downs National Park²² and Sussex Heritage Coast (the Heritage Coast)²³.

²² Designated in 2011 under the National Parks and Access to the Countryside Act (1949)

Secondly, the fact that the proposals include laying part of the onshore underground cabling directly through the National Park itself and thirdly the potential effects on the local landscape character and residential amenity of householders residing in close proximity to the proposed Bolney substation.

Policy Context

- 4.310 In examining these issues we have had regard to the policy set down in EN-1; EN-3; EN-5, noting the general advice at EN-1 paragraph 5.9.8 that *'virtually all nationally significant energy infrastructure projects will have effects on the landscape'*. Advice in EN-1 paragraphs 5.9.9 – 5.9.13 relating to development proposed within and outside nationally designated areas which might affect them is noteworthy in this context: *'National Parks... have been confirmed by the Government as having the highest status of protection in relation to landscape and statutory purposes which help ensure their continued protection and which the IPC should have regard to in its decisions. The conservation of the natural beauty of the landscape and countryside should be given substantial weight by the IPC in deciding on applications for development consent in these areas.'*
- 4.311 The associated development included within the scope of the application DCO includes the export cable corridor which is proposed to pass through the National Park. Accordingly the Panel considers that the policy set out at paragraphs 5.9.9 -5.9.11 of NPS EN-1 is applicable to the export cable corridor element of the Project. This policy addresses development proposed within nationally designated landscapes.
- 4.312 Paragraphs 5.9.12 – 5.9.13 of NPS EN-1 address developments outside designated areas which might affect them. The policy states that *'the duty to have regard to the purposes of nationally designated areas also applies when considering applications for projects outside the boundaries of these areas which may have impacts within them. The aim should be to avoid compromising the purposes of designation and such projects should be designed sensitively given the various siting, operational and other relevant constraints'* The NPS further states 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.'*
- 4.313 In addition, we note the statutory purposes of National Parks to *'conserve and enhance their natural beauty, wildlife and cultural heritage and to promote opportunities for the understanding and enjoyment of their special qualities by the public.'* Furthermore the statutory duty on the Panel as a *'relevant authority'*,²⁴ to have

²³ The Sussex Heritage Coast is within the South Downs National Park and comprises the white chalk cliffs of Beachy Head and Seven Sisters

²⁴ The National Parks and Access to the Countryside Act 1949 s11A(2)

regard to these purposes when coming to decisions relating to, or affecting land within these areas as provided for in Section 11A(2) of the National Parks and Access to the Countryside Act 1949 The statutory purposes of the SDNPA, as a national park authority, are specified by the Environment Act 1995; these are:

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

4.314 The special qualities identified by the SDNPA as a result of stakeholder engagement since designation are set out in excerpt below:

1	Diverse, inspirational landscapes and breathtaking views		4	An environment shaped by centuries of farming and embracing new enterprise	
2	A rich variety of wildlife and habitats including rare and internationally important species		5	Great opportunities for recreational activities and learning experiences	
3	Tranquil and unspoilt places		6	Well-conserved historical features and a rich cultural heritage	
			7	Distinctive towns and villages, and communities with real pride in their area	

4.315 It must also fulfil the following duty:

'In carrying out its role, the Authority has a duty to seek to foster the economic and social well-being of the communities living within the National Park.'

4.316 In this regard, we also note the Department for Environment Food and Rural Affairs (DEFRA) advice which sets out how authorities subject to the duties *'might demonstrate compliance with them'* and explains the process by which they will be monitored. This guidance reminds the Panel that the duties apply to *'any'* decisions an authority may take affecting land in designated National Park areas.

4.317 With this in mind, the findings of the Panel's assessment in relation to seascape, landscape and visual effects of the offshore elements of the proposal are explained first below, before consideration is given to the effects of the onshore elements of the proposals on the landscape and visual receptors.

THE EFFECTS OF OFFSHORE DEVELOPMENT UPON RECEPTORS

Seascape, landscape and visual effects – Zones of Theoretical Visibility (ZTVs) and Study Area

- 4.318 The applicant's seascape, landscape and visual impact assessment (SLVIA) is provided at Section 12 of the ES (APP-069) with figures (APP-100 to APP-109) and Appendices (APP-146). The applicant explains that given the '*capacity for the proposals to affect both sea and land*' reference to seascape and landscape allows for distinctions to be made where the overlap of these two influences requires definition. The assessment of onshore effects of the proposals on landscape and visual receptors are set out in Section 26 of the ES (APP-083, with Figures (APP-120 and APP-121) and Appendices (APP-171), although the applicant advises that the two sections should be read in conjunction with each other.
- 4.319 The applicant's ES provides illustrations of zones of theoretical visibility (ZTV) of the proposed wind farm extending across a 35km radius from the outer edges of the proposed order limits.
- 4.320 The ES seeks to identify those areas that might be subject to visual effects over very long distances including locations within the National Park. The ES (APP-069) explains that the focus of the visual assessment, identification of key receptors and the selection of illustrative viewpoints concentrate on the coastline or immediate hinterland and to elevated viewpoints in the National Park. These areas, the applicant suggests, '*offer the greatest scope for inter-visibility and represent the focus of potential visual effects.*'
- 4.321 Seascape character areas are also considered across a 35km range, because of their more uniform influence within the seascape.
- 4.322 The applicant's landscape/seascape characterisation and impact assessment is based on the assumption that viewing the proposed development over greater distances than 35km will '*be unlikely to result in perceptible changes to seascape or landscape character.*'
- 4.323 The cumulative SLVIA considers all consented and proposed developments of a scale with the capacity to influence the visual context of views again within the 35km ZTV.
- 4.324 The Panel notes from the applicant's ES (APP-069), that the extent of the study area; the cumulative development considerations; representative views and key views for visualisation, were all discussed and largely agreed during pre-application consultation with consultees. These included the SDNPA, WSCC and BHCC. Although NE was content with the size of the study area generally, it initially disagreed with the same size study area being used to assess cumulative effects, referring to the Scottish National

Heritage (SNH) guidelines (SNH, 2005). These recommend the use of a 60km study area for the assessment of cumulative impacts in relation to wind farm developments to ensure that any potential cumulative impacts towards the edge of the study area could be identified.

- 4.325 NE (REP-152) initially considered that the size of the study area would not capture the potential effects of the Navitus Bay OWF. The applicant in 'Seascape Landscape and Visual Assessment Clarification Note' for deadline II (REP-270) confirmed that alterations to the boundary of the Navitus Bay wind farm had taken place since the writing of the ES, such that it was now located some 90km to the west. As a consequence, NE revised its position, accepting in its written representation that the study area of 35km would be sufficient for the identification of potentially significant cumulative effects (REP-297).

Seascape, landscape and visual effects – Worst Case Scenario

- 4.326 The '*worst case scenario*' assessment principle underpinning the assessment contained in the ES is based on broad assumptions which are in turn founded upon the 'Rochdale Envelope' approach. The Panel considers this approach to be in line with NPS EN-3 which states at paragraph 2.6.43: '*the IPC should accept that wind farm operators are unlikely to know precisely which turbines will be procured for the site until sometime after the consent has been granted.*'
- 4.327 The applicant assessed a number of options for arranging the layout of the offshore array (APP-100) (Figure 12.50 – Turbine Layout Options) before deciding on a worst case scenario. These options included specification of differing heights and numbers of turbines, of spacing between turbines and of the spatial form of the layout - for example hexagonal or orthogonal forms.
- 4.328 The applicant determined that 'Option F' of the assessed range of options represented the worst case scenario. In their view, Option F as a wider spread of smaller turbines was seen to be more intrusive than a smaller spread of taller turbines. Option F was then used as the basis for the SLVIA. Option F consists of the largest number of smaller turbines. Option D is also considered in the ES, providing an alternative (although the applicant argues, not worst case) scenario, being based on the smallest number of tallest turbines.
- 4.329 NE initially had doubt over whether Option F illustrated the '*worst case*' scenario, arguing in its written representation (REP-297) that the visual impact of a smaller number of taller turbines, given the associated increase in height, was greater potentially than the worst case suggested by the applicant. This point was explored in some detail at the Landscape and visual impact ISH (HR-043 to

HR-046). NE concluded at the hearing that Option F did in their view represent the worst case. However, the illustrations provided by the applicant in relation to a smaller number of taller turbines were also helpful in informing the worst case assessment (HR-044). NE subsequently concluded that the ES did contain sufficient information for the worst case scenario to be adequately assessed (REP-438).

- 4.330 The Panel agrees with NE and finds that the use of Option F in the ES, supplemented in certain instances, by the use of Option D, provides appropriate information from which assessment of the worst case could be undertaken. Our findings in relation to the landscape and visual impacts of the project are not altered by which of these Options might be regarded as the worst case scenario.

Seascape, landscape and visual effects – Effects during Construction and Operation

- 4.331 The applicant's assessment concludes that there would be **negligible** adverse seascape and landscape effects and **minor** adverse visual effects during the construction stage.
- 4.332 The Panel noted the absence of representations expressing concern about the visual effects of the proposed wind farm during its construction off shore. It further noted that the visual effects of offshore elements of the development during the construction phase would be short term in duration. As such, the Panel agrees with the findings of ES over the potential effects during construction.

Seascape, landscape and visual effects – Effects during Operation

- 4.333 In relation to operational impacts within the study area, the seascape and landscape assessment undertaken by the applicant indicates that the proposals would result in **major** and **major/moderate** adverse effects should the wind farm be consented. These would arise given the visual relationship and associations between the seascape character areas and the landscape character areas coincident with the extents of the ZTV and study area. Table 12.13 of the ES (APP-069) sets out the findings in further detail.
- 4.334 Given the findings of the ES at this point and the number of representations received early on in the examination from interested parties on this matter, the Panel identified two different but related issues that required further exploration in relation to the operational effects of the off shore wind farm during operation. First, the effects of the array on views out to sea from coastal settlements, including the effect on the setting of any urban streetscape heritage assets, particularly in view of the importance

of coastal tourism, discussed in the section on socio-economics. Second, the effects of the proposed offshore array including the associated off shore substations upon the National Park and Heritage Coast. These two matters are considered in turn below.

(i) **Landscape, seascape and visual effects upon coastal settlements**

- 4.335 Interested parties raised issues in relation to seaward views from coastal settlements. These include the effects on sea views from seafront residential properties, the effects on views from seafront tourist areas of Brighton, Hove, Worthing and other holiday resorts along the edge of the bay between Selsey Bill and Beachy Head; and the effects within the settlements themselves. The latter point was captured eloquently by one interested party, at one of the open hearings (HR-023 to HR-025) who referred to the importance of "an uninterrupted sea view to the character and sensation of space when within Brighton".
- 4.336 Whilst the Joint Councils acknowledged that some local people would perceive the wind farm as '*visually intrusive, disrupting open expansive sea views / encroaching on the sense of openness and introducing light into a previously unlit night sky,*' it remained supportive of the proposals (REP-227). Equally, BHCC recognised that the proposed wind farm array would have a '*material visible impact*' on the city in general and the seafront in particular. This, in the context of the seafront being viewed as a '*major attraction for the city and ... attracting business visitors to conferences and events*' (REP-225). However BHCC also remained supportive of the proposals.
- 4.337 BHCC and the Joint Councils both focussed upon mitigation of the visual effects through the implementation of offsetting measures suggesting the creation of a visitor centre and educational facilities. This is discussed further under the socio-economic part of this chapter. Suffice to say that although the applicant has engaged in dialogue with the local authorities regarding the potential provision of a visitor centre, the absence of any provision in its s106 or UU or within any Order provision means that this falls outwith the scope of the application and the Panel has not afforded this weight in its deliberation.
- 4.338 The Panel undertook an unaccompanied site visit to Kentish Flats and Thanet which were locations suggested as helpful comparators by interested parties at the Preliminary Meeting (HR-004 to HR-006). The Panel was struck by the extent to which visibility and perception of the size of the wind farm altered, depending on the colour of the sky, shadow and sun and the height from which the wind farm would be viewed. The Panel therefore finds variability in weather conditions to be a significant factor likely to determine the visibility and prominence of the proposed wind farm. This was also underlined by our experience of an offshore accompanied site visit

around the Order Limits in sea mist where visibility fell to a few hundred metres, obscuring any view looking back towards the coast line and removing any view of the proposed location of the wind farm array when viewed from the coast.

- 4.339 One further matter the Panel sought to understand more clearly was the potential effect of the array on coastal settlements during hours of darkness, requesting night time visualisations and information on lighting types (HR-043 to HR-046). These were subsequently provided by the applicant (REP-491).
- 4.340 The indicative night time visualisation (REP-491) of the view out to sea from Brighton Promenade showed that the marine navigation and aviation warning lights would be clearly visible in fair weather conditions. However, having regard to various night time unaccompanied site visits to settlements along the coast, the Panel accepted the applicant's assessment that from many vantage points including Brighton's historic Promenade, the wind farm lights would be seen within the urbanised setting of the brightly lit coastline and in the context of lighting from shipping operating in the area. The impacts would also often be mitigated by varying weather conditions. As such, the Panel did not consider the likely effect of night time lighting to be an over-intrusive element of the night sky.
- 4.341 The Panel finds that the proposed wind farm would be clearly visible from coastal settlements. It agrees with the applicants findings that there would be major and major/ moderate adverse effects during operation should the wind farm be consented. Notwithstanding this, the Panel notes the continued support for the proposals by the Joint Councils and BHCC. The Panel also considers that during hours of darkness, lighting from the proposed wind farm would not be overly intrusive. On balance, the Panel does not consider the effect of the proposed wind farm on seaward views from coastal settlements to outweigh the need for energy infrastructure as set out in EN-1 paragraph 3.1.1.

Visual effects of offshore development upon the South Downs National Park and Heritage Coast

- 4.342 The second matter considered in relation to the visual effects of the wind farm relates to views out to sea from the National Park and Heritage Coast. The Panel received many representations from interested parties who were private individuals expressing great concern regarding this matter. An example of the content typical of these submissions is encapsulated by the representation of one interested party who wrote of concerns about the 'cluttering of the view' when seen from the Seven Sisters Country Park (REP-210). Given the statutory duty placed upon the Secretary of State to have regard to the purposes of designating the National Park, (referred to earlier in this section), the Panel has given careful

consideration to these representations in our deliberations upon this matter.

- 4.343 During operation, should the wind farm be consented, the ES suggests that it would have a significant adverse effect on the landscape character of the National Park and Heritage Coast and upon visual receptors in these areas. The SLVIA assesses the magnitude of change to the character and setting of the National Park and the Heritage Coast as **medium** and the level of effect as **major/moderate**. The Panel notes that of the 31 viewpoints assessed in the applicant's SLVIA, 17 are assessed to have an 'associative relationship' with the National Park or Heritage Coast. The predicted effects (all of which are adverse) at 10 of the 17 viewpoints would be **major**; effects at 4 viewpoints would be **major/moderate**; at 2 they would be **moderate** and at one the effects would be **minor / negligible** (REP-270).
- 4.344 The Panel undertook a number of site visits including an accompanied site visit to the viewpoints assessed in the ES and to other locations so that Panel members could see the existing landscape, seascape and related views and consider any potential effects likely to impact upon the landscape character of the National Park and Heritage Coast first-hand. The Panel also requested the applicant to prepare visualisations of one additional viewpoint, which is the view of the Rampion project from the beach at Cuckmere Haven. This was to enable the visual effects of the proposed offshore array from that point to be more fully understood and to address concerns raised by the National Trust that the lack of assessment of the view from the shore at Cuckmere Haven (in National Trust ownership) was an important omission from the SLVIA included in the ES (REP-295). This was subsequently provided by the applicant (REP-369).
- 4.345 As to the acceptability of these predicted effects upon the National Park and Heritage Coast, opinions differed between the applicant and other interested parties. The applicant argued that 'a judgement of acceptability may not be determined on the basis of the significance of the effect alone' (REP-270). The SDNPA, on the other hand, argued that the *'proposed wind turbines will have a detrimental and unacceptable impact upon the Heritage Coast... (and) a detrimental and unacceptable impact upon the landscape character of the National Park'* (REP-589). These factors, together with concerns from the SDNPA regarding the route and effects of the onshore export cable corridor and the absence of an agreed s106 agreement providing what the SDNPA argued was an adequate level of offsetting investment in environmental enhancement of the National Park (discussed later in this section and earlier in the report under the section on Appropriateness and necessity of any planning obligations with local planning authorities), led the SDNPA to the view that consent should not be granted for the project (REP-589).

- 4.346 The National Trust owns a significant part of the Heritage Coast, and argued that it is one of the few remaining undeveloped areas along the south coast and is of exceptional importance and value (REP-150). The National Trust considered that the proposed wind farm would have major and moderate effects on the elevated and coastline extents of the National Park and Heritage Coast; major effects on South Downs Landscape Character Area and South Downs Coastal Waters Seascape Area and major impacts on several key National Trust viewpoints including Birling Gap, Devils' Dyke, Highdown Hill, and Cissbury Ring (REP-295).
- 4.347 Given the volume of recreational visitors (39 million recreational visits per year (REP 150), later revised upwards to 46 million (REP 295) and the large resident population relative to other National Parks, the National Trust put forward its case that the project would be contrary to Government policy set out in NPS EN-1 and EN-3 for the following reason: 'We believe the harmful effects of the project in terms of impact on landscape, seascape and visual impact are likely to outweigh the benefits and as a result is contrary to government policy as set out in EN-1 and EN-3.'

Visual effects of offshore development upon the South Downs National Park and Heritage Coast - Mitigation proposals

i) Structures Exclusion Zone

- 4.348 The Panel noted that although interested parties were in general agreement over the level of the predicted effects upon the National Park and Heritage Coast, they differed markedly in their responses to the findings of the SLVIA and the potential for mitigation or offset of the adverse landscape, seascape and visual effects predicted in the assessment. The SDNPA argued that mitigation of the offshore array was not possible (other than by not constructing the wind farm) and that the only route forward was through offsetting investment and enhancement of the quality of the National Park by other measures to be specified in a s106 agreement (HR-043 to HR-046). At the end of the examination, the SDNPA had not reached agreement over the terms of a s106 obligation, a matter that is discussed earlier in this chapter.
- 4.349 NE adopted a different line of argument, suggesting that the *'primary way of reducing the adverse significant impact was to increase the distance of the array from the sensitive viewpoints within the National Park'* (REP-270). NE's position followed on from a discussion earlier in the examination which explored the use of the term *'remote'* to describe the location of the offshore array from the National Park and Heritage Coast. Despite the applicant's attempt to resolve matters by explaining that remote meant *'situated at some distance away'* rather than inferring a sense of *'context dissociation'*. Neither NE nor the SDNPA were satisfied that the applicant's description of the location of the

proposed offshore array as *'remote'* was justified or accurate. They argued that the wind farm was not remote in distance terms given that it is proposed to be located some 13-14km off the coast (REP-270).

- 4.350 When pressed by the Panel, NE later clarified its position agreeing that anything over 20km would be considered to be *'remote'*. (HR-079 to HR-082). For the purposes of the assessment of the seascape, landscape and visual impacts of the proposed Rampion Project, the Panel accepts NE's proposed definition of *'remote'* as a location over 20km away from the viewing point.
- 4.351 It is against this background that the applicant proposed, by way of mitigation, the introduction of a reduced array area.²⁵ The mechanism proposed by the applicant to secure this reduced array area involves creation of a *'structures exclusion zone'* (REP-490) at the eastern end of the Order Limits, secured through a requirement in the Order. The practical result would be that the area to be occupied by turbines, the meteorological mast and the offshore substations would be located further away from the National Park and Heritage Coast than proposed by the application DCO. The coordinates of the structures exclusion zone are set out in the recommended Order at Schedule 13, Article 1(5), Design Parameters.
- 4.352 As part of this proposal, the applicant provided further viewpoint visualisations of the reduced development area (REP-490). In relation to seascape and landscape effects, the applicant (REP-583) calculated that the horizontal spread of the proposed wind farm would be reduced. Depending on the angle of view this would vary, but would include a reduction of 3 degrees at Beachy Head (17 degrees to 14 degrees); reducing to 2 degrees at Worthing seafront (52 degrees to 50 degrees) (REP-489). The applicant also explained that there would be an increase in distance of the proposed wind farm from the Heritage Coast and National Park (REP-489). NE calculated that the distance to the edge of the proposed array from Beachy Head would increase from 3.3km to 25.8km, Birling Gap from 19.6km to 22.8km and Cuckmere Haven Beach from 17.5km to 20.2km.
- 4.353 In terms of visual impact, the applicant argued that the visibility of the turbine array would be reduced, given both the increased distance from the assessed viewpoints in the east of the study area and the reduction in horizontal spread. The Panel noted, however, that the applicant did not seek to argue that the significance of the predicted effects reported in the ES would change (REP-489).

²⁵ This is the principle change to the design information submitted during the course of the examination. Design matters more generally are discussed in the section on good design.

- 4.354 All the relevant interested parties that expressed an opinion were supportive of the proposed structures exclusion zone and equally, they shared the applicant's view that this would not alter the significant effects upon seascape character, landscape character and the purposes of the designation of the National Park and Heritage Coast.
- 4.355 NE for example stating that the proposed project would still compromise or conflict with the landscape / seascape objectives of designation of the National Park and Heritage Coast (REP-583).

'Nevertheless (NE) agree that the increase in distance and reduction in horizontal spread will have a positive effect on the appearance of the wind farm.'

- 4.356 The Panel considers that the structures exclusion zone would have a positive effect on mitigating the impact of the proposed wind farm on the National Park and Heritage Coast, by increasing its distance away from these sensitive receptors and by reducing the horizontal spread, decreasing the extent to which the wind farm would be visible in views out to sea. The Panel further noted that the increase in distance would mean that the proposed array would be regarded as *'remote'* (as defined by NE and discussed earlier) from a number of viewpoint locations to the eastern end of the National Park and the Heritage Coast. As such, when considered as part of wider package of the mitigation measures, the Panel concludes that the structures exclusion zone would provide an important contribution to reducing the visual effect of the offshore wind farm on the National Park and Heritage Coast.

(ii) *Detailed offshore design parameters*

- 4.357 The Panel examined in some detail, offshore design parameters relating to the proposed project. Although these were the subject of some discussion at the examination, agreement was reached over the wording of these requirements which now appear in the recommended DCO at Requirements 2 to 5. The Panel considers the offshore design parameters provide an important contribution to reducing the visual effect of the offshore wind farm on the National Park and Heritage Coast.

(iii) *Design Principles*

- 4.358 An element of mitigation included by the Panel in the recommended Order but **not** agreed between the applicant and interested parties, is the securing of design principles for the offshore array.
- 4.359 The SDNPA and NE argued throughout the examination that the applicant had not had sufficient regard to the statutory designation objectives of the National Park and to its special qualities in developing project proposals. The National Park special qualities are discussed earlier in this section.

- 4.360 Towards the end of the examination, NE put forward a proposal to include within the Order's Array DML a set of design principles to guide the layout of the offshore wind farm, this included the need for the applicant to, as part of the approval process from MMO, demonstrate that it had taken these design principles into account. In support of its case, NE submitted redrafted wording of Schedule 13, Condition 11 of the application DCO (REP-595).
- 4.361 The applicant objected to the redrafted wording and the application of design principles, principally on the basis that this condition would require qualitative judgment and would lead to uncertainty as to the likelihood of approval of any details developed (HR-042 to HR-046). A question also arose from the MMO who suggested that it did not have the professional capability to assess the design details to be submitted against any design principles that might be developed.
- 4.362 The Panel has considered carefully the points made by the applicant and the MMO in relation to the introduction of a qualitative assessment element into determination of design details and the process and procedure for discharging the condition.
- 4.363 To consider the MMO's point first the Panel notes that the MMO accepted, in response to questioning from the Panel, that its decision-making would be bound by the same statutory duty to have regard to the designation objectives of the National Park, as would apply to other statutory decision makers. (HR-078 to HR-082). The Panel therefore finds it difficult to understand how the MMO could fulfil that duty, without considering the effects of the design of the offshore array, on views seaward from the National Park and Heritage Coast.
- 4.364 The Panel also considers that although the MMO may not have professional capability within its organisation to consider qualitative design aspects, appropriate advice would be available to the MMO from bodies that do offer that expertise. This would include NE, which also has a statutory role as advisor to the Secretary of State regarding National Parks and landscape matters. NE confirmed that it would also be prepared to offer that advice if requested to do so by MMO (HR-078 to HR-082).
- 4.365 We therefore find that the approach to the consenting of design details proposed by NE (based on prior agreement of a set of design details and a requirement for the applicant to demonstrate that it has had regard to them) is not only workable but appropriate when compared with the approach that would be adopted in relation to an onshore wind farm in an equally sensitive and prominent location.

4.366 Turning now to consider the applicants point around the potential lack of certainty given the exercise of a valued judgement in relation to design, we set out our reasoning below.

4.367 The Panel is mindful of the need for the SoS to have regard to the designation objectives of the National Park in determining this application. The Panel has taken all the submitted information into account and has given careful thought to the likely impacts of the project upon the National Park. It has noted policy regarding developments outside nationally designated areas which might affect them (set out at paragraphs 5.9.12-5.9.13 of NPS EN-1). It has also noted policy on good design set out in NPS EN-1.

'4.5.1 Applying 'good design' to energy projects should produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction and operation, matched by an appearance that demonstrates good aesthetic as far as possible.'

4.368 Government policy on good design in national infrastructure projects in NPS EN-1 (paragraph 4.5.3) also states clearly that the IPC, and therefore the Panel and the SoS:

'should satisfy itself that the applicant has taken into account both functionality (including fitness for purpose and sustainability) and aesthetics (including its contribution to the quality of the area in which it would be located) as far as possible.'

The paragraph goes on to specifically identify that it would be appropriate for applicants:

'to demonstrate good design in terms of siting relative to existing landscape character, landform and vegetation.'

4.369 In addition, design principles have been adopted in other Orders under the Planning Act 2008 and their operation has a direct parallel with landward development design principles. The use of such principles is a well-established feature of the Town and Country Planning Act 1990 regime and of planning practice supported by government advice eg National Planning Policy Framework (NPPF) Section 7 paragraph 56:

'The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.'

4.370 The Panel considers the Framework's policy to be important and relevant to this examination because it is recent Government policy on design which it is consistent with and builds upon the policy in NPS EN-1 on good design.

- 4.371 We therefore consider that the '*design principles*' approach advocated by NE, is relevant and important to ensure compliance with Government policy on good design as set out above.
- 4.372 In relation to the extent to which the design of the offshore array and associated works currently meet the criteria for good design set out in NPSs EN-1 and EN-1, we find that the amount of information available in order to assess the design of the array is limited.
- 4.373 It is the Panels view that the various components of any design brought forward within the Order Limits and other parameters set out in the recommended Order, are likely to be standard types or models of engineered turbine or associated equipment and imported to site for installation. It seems to us that the principal scope for design lies in determining the actual built extent and layout of the array.
- 4.374 The applicant's project manager confirmed in response to questions (HR-042 to HR-046) that the Order Limits allow significant scope for variation of the layout and that this scope goes some way beyond micro siting tolerances. Therefore, we find that there would be scope for variation of the siting and layout of the array within the Order Limits. On this basis, we consider that the introduction of a set of design principles that address the designation objectives of the National Park, in line with the 1949 Act, would be necessary to work towards mitigating impacts on the National Park and would be practicable and enforceable.
- 4.375 The Panel has thought very careful about the precision of NE's drafted Condition 11. To improve precision, the Panel has removed the phrase 'from sensitive receptors' replacing this with the phrase 'from the South Downs National Park and the Sussex Heritage Coast' thereby improving the certainty of the wording proposed by NE, without altering purpose or intent. The full wording of Condition 11 is provided in the recommended Order.
- 4.376 The Panel has also considered carefully the six tests of a planning condition as set out in the Governments Planning Practice Guidance. These tests are set out in paragraph 206 of the National Planning Policy Framework as follows: '*Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.*'
- 4.377 Whilst the Panel agrees with NEs position that the applicant would need to give careful consideration to matters relating to layout and design of the wind farm, we also acknowledge that the applicant would still need the flexibility to have regard to other constraints such as ecological effects, safety reasons or engineering and design parameters. For this reason, we have proposed retaining the wording 'as far as possible' to ensure there is flexibility in the

application of the design principles to address constraints the applicant may encounter.

- 4.378 The Panel recognises that use of the phrase 'as far as possible' requires the application of professional judgment by the MMO in considering how to interpret 'as far as possible'. That judgment may require the assessment of technical evidence regarding the constraints faced by the wind farm promoters in bringing forward the detailed proposals for the offshore elements of the scheme. In that context the Panel gives weight to NE's confirmation that it would be prepared to provide advice to the MMO regarding the discharge of this condition (discussed earlier).
- 4.379 The Panel finds that the wording now included in the recommended Order at Schedule 13 Condition 11 meets the first three tests of a robust planning condition as set out in paragraph 206 of the National Planning Policy Framework, because of the statutory duty placed upon the Secretary of State and the MMO to have regard to the purposes of the National Park, as discussed earlier in this section. It is also enforceable and precise because the boundaries of the designated areas of the National Park and Heritage Coast are well defined in law and policy. It meets the last test of being reasonable in all other respects because the caveat provided in the wording of this condition requires the decision maker to have regard to any relevant constraints upon the development and delivery of the scheme and because NE has confirmed that it would provide relevant advice to the MMO in assessing these matters.
- 4.380 Subject to the provisions set out above, the Panel finds that although the proposed offshore wind farm would give rise to significant adverse visual effects on the National Park, measures to secure regulation of the detailed design, having regard to the objectives of the National Park, can be provided for appropriately in the Array DML conditions as suggested by NE and as set out in our recommended Order.

Unilateral Undertaking

- 4.381 A further element to the mitigation package put forward by the applicant is the measures included in the UU made in favour of the SDNPA. These measures include mitigation, monitoring and enhancement provisions and are discussed in detail earlier in this chapter.

Conclusions of the visual effects of the offshore development

- 4.382 In the light of all the information and evidence submitted regarding this matter and given the order limits of the application, the Panel recognises that no measures are available that would completely mitigate the significant adverse visual effects of the

proposed array on the National Park or Heritage Coast. As such the Panel recognises that there would be some change to the special qualities of the National Park, (set out earlier), in particular 'diverse, inspirational landscapes and breathtaking views' would be changed in parts of the National Park.

- 4.383 Nonetheless, the Panel is of the view that the structures exclusion zone would provide some level of mitigation of these effects, and that at the eastern end of the proposed array, the wind farm would be perceived as being remote from the Heritage Coast and National Park. The Panel is also of the view that the introduction of design parameters and design principles, secured by the DCO, would add to the mitigation package proposed, including the mitigation included in the UU as discussed at paragraph 4.32 et seq above.
- 4.384 In so far as the UU is concerned, the Panels judgment set out in detail earlier in this chapter is that the UU would go some way to mitigating the effects on the National Park of long distance views albeit that it is accepted by the Panel that those effects would not be eliminated (or offset) in their entirety.
- 4.385 On balance, and taking into account the range of mitigation measures set out above, although the visual effects of offshore development upon the National Park and Heritage Coast cannot be eliminated, the level of benefits to be afforded from the proposed wind farm in terms of the need for energy infrastructure as set out in EN1 outweigh the level of damage likely to be occasioned to the environmental setting of the National Park and the harm to the objectives of designation of the South Downs National Park, including consideration of its outstanding long distance views.

EFFECTS OF ONSHORE ELEMENTS OF THE RAMPION PROJECT

Landscape character and visual effects of the onshore export cable corridor

- 4.386 Turning to the effects of the proposed onshore elements of the application, the Panel received representations from interested parties firstly, in relation to the effects of laying part of the onshore underground cabling through the National Park (REP-019, REP-124, REP-162, REP-172) and, secondly, in relation to the effects on the local landscape character and views and upon the residential amenity of householders living in close proximity to the proposed Bolney substation (REP-158, REP-115).
- 4.387 The Panel undertook both accompanied and unaccompanied site visits in order to inspect the route of the cable corridor passing close to recreational and housing areas, under roads and a railway and through the National Park. The Panel also inspected the proposed site of the Bolney substation and considered the location

of residential properties in the vicinity of that site, in order that it could understand the potential effects of the onshore elements of the proposed Rampion project.

Effect on hedgerows and trees from cable laying

- 4.388 Turning first to the effects of the onshore cable corridor upon the National Park. The principle of laying the export cables in trenches underground, rather than constructing overhead transmission lines, was generally welcomed by interested parties (REP-431, REP-038) on the basis that this would help to reduce the adverse effects on the landscape character and views (REP-431, REP-080). However, a high proportion of the relevant representations received argued that it was inappropriate to construct the export cable corridor through the National Park. These IPs believed that the likely adverse effects upon the landscape and/or on recreational enjoyment of the South Downs had not been given sufficient consideration (eg REP-115, REP-172).
- 4.389 A number of IPs spoke at the open floor hearings regarding the value attached to the landscape character of the National Park as a place of beauty and recreation, and the damage that would be caused to downland, hedgerows and ancient woodland (HR-023-HR-025) by the proposals. Others submitted representations referring to their belief that a better route through the National Park could have been chosen (REP-080, REP-038 and REP-195).
- 4.390 Requirements 28 and 29 of the recommended Order make provision for the submission of Ecological and Landscape Management Plans (ELMPs) for the wider project area and for the route within the National Park. The requirements provide that the relevant ELMPs to provide for landscape and ecological mitigation of the cable corridor following construction, supported by wider landscape and ecological enhancement measures must be submitted and approved by WSCC and the SDNPA, as appropriate, in consultation with NE. The Panel is satisfied that the scope and content of these requirements are sufficiently robust to address the concerns raised by interested parties regarding the landscape and ecological implications of the onshore construction phase proposed. This conclusion also has regard to the s106 agreement between the applicant and WSCC and the UU proposed by the applicant in favour of the SDNPA.
- 4.391 The applicant assessed hedgerows against the 1997 Hedgerow Regulations to identify 'important hedgerows' (APP-081). These are described and listed in the ES Section 25 'Archaeology and Cultural Heritage' (APP-082). Eighteen 'important hedgerows' are crossed by the proposed cable corridor and two 'important hedgerows' are removed at the proposed substation site. The applicant estimates approximately 600m of permanent direct loss from those at the substation site, three 16m temporary direct losses from construction access routes and short term negative

impact of 40m loss from hedgerow breaches required for construction works. The habitat fragmentation aspects and associated mitigation of the breaches have been described in the biodiversity section in this chapter.

4.392 The applicant proposed mitigation through compensatory planting for the two important hedgerows that are proposed for removal at the substation site. This is secured through the indicative landscape strategy set out in Section 26 of the ES (APP-083) and illustrated on Figure 26.6 (App-121). The landscape strategy provides for species present in the area and of native origin to be used and for locations of new plantings to function for wildlife connectivity as well as for landscape character and visual purposes. The ES (APP-081) sets out mitigation in terms of removal and replanting techniques for the breaches in the 'important' and 'non-important' hedgerows. These compensatory works and delivery measures were subsequently incorporated into the outline ELMP (REP-497) and are therefore secured through Requirements 28 and 29 of the recommended Order. These two requirements provide specifically for a hedgerows management plan to be part of the ELMP and that this should be in accordance with the hedgerows management plan certified by Article 40. The applicant submitted detailed replacement plans of the locations of the important hedgerows and where they intersect with the Order limits (REP-264). This information also references Schedule 10 to the recommended Order (REP-633), which confirms all locations and cross-refers to Article 37, which places restrictions on hedgerow removal.

4.393 The Panel is satisfied that the provisions now included in the recommended Order, including Article 37, Requirements 28 and 29 providing for the ELMPs, together with the landscape strategy, provide sufficient opportunity for the LPAs to assess the detailed submissions. Taken together, the provisions are sufficient to ensure the protection and reinstatement of the 'important' and 'non-important' hedgerows.

Construction compounds

4.394 A second area of disagreement to emerge (with implications for predicted landscape and visual effects both within and outwith the National Park) related to the lack of specificity in the applicant's proposals regarding the location of construction compounds (APP-059). The submitted draft DCO allowed flexibility as to where any construction compounds and plant and materials storage could be located within the Order Limits in the corridor, including within the National Park.

4.395 The SDNPA and NE objected on the basis of the potential environmental effects of such compound and storage facilities,

together with any associated security fencing, lighting, apparatus, access arrangements and materials. NE's position was that the lack of specificity was unsatisfactory in that its result was that the LVIA was unable to provide a comprehensive assessment of the landscape and visual impacts of the cable corridor, including the effects in those locations where the cable route is proposed to pass through the South Downs National Park. The SDNPA concurred with NE's position.

4.396 The applicant argued that certainty in these matters could not be achieved until the main contractor for the site was appointed to prepare and carry out the works. During the course of the examination the applicant sought to distinguish between the longer-term principal construction compounds proposed to be deployed adjoining the A259 at Worthing Park, below Tottington Mount and at/adjoining the proposed new onshore substation near Bolney and the more transient 'construction laydown areas' or temporary compounds to be operated along the route to facilitate construction, including facilities close to the entry and exit points for the proposed HDD sites.

4.397 During the examination the applicant:

- introduced definition of the terms 'construction laydown area' and 'horizontal directional drilling exit compound' in order to clarify the types of works envisaged in respect of these construction facilities;
- amended Schedule 1, Part 1 of the submitted draft Order to clarify that HDD compounds were proposed as part of the authorised development at Works No 13, 15 and 19 as shown on the Works Plan;
- included a requirement (Requirement 18) that details of all temporary fencing or other means of enclosure to be in situ longer than six months be submitted to and approved by the SDNPA and be implemented as approved;
- included a mitigation measure at Requirement 22 to allow the Environment Agency to ensure that any materials to be stockpiled in the flood plain would not pollute water courses, hinder the movement of floodwater or otherwise lead to scouring of unprotected topsoil;
- included into the CEMP requirement (Requirement 26 in the recommended Order) provisions to require consultation with the EA (and, in relation to the soil management plan that would form part of the CEMP with NE) and provision for a written scheme to deal with contamination of land including groundwater within the Order limits;

- included additional provisions within the construction health, safety and environmental plan requirement (Requirement 30 in the recommended Order) to secure agreement from WSCC for a range of detailed information regarding proposals for (inter alia) construction site management, site security, welfare facilities, temporary fences, walls or other means of enclosure outside the National Park, environmental management and construction laydown areas;
- included in Requirement 31 (Construction traffic management plan) provision for details of access routes along the highway network to construction compounds;
- included a developed provision at Requirement 39 (land outside the National Park) and a new provision at Requirement 40 (land within the National Park) requiring the reinstatement to its former condition of land used temporarily for construction;
- Included at Requirement 40(3) a method statement for restoration of chalk grasslands at Tottington Mount to accord with the outline Tottington Mount management plan.

4.398 In the judgment of the Panel these provisions ensure that sufficient detailed information and control would be made available to the relevant local planning authorities to ensure that any landscape and visual effects (and other potential environmental effects) associated with construction compounds and laydown areas both within and outside the National Park would be regulated satisfactorily.

Landscape and visual effects of the proposed Bolney Substation

4.399 The applicant undertook a detailed landscape and visual impact assessment (LVIA) of the landscape character and visual effects of the proposals to build a new onshore substation in the parish of Twineham near Bolney, adjoining a large existing National Grid substation facility.

4.400 WSCC initially argued that not all viewpoints had been considered when assessing the views of the landscape considered from public rights of way. In particular, WSCC referred to footpath TW1-8T at Bolney, which the applicant proposed to reroute to the east of the proposed substation. WSCC argued that the true effect of the proposed substation upon future views from the re-routed footpath had not been established and assessed. The applicant and WSCC subsequently agreed that the effect on the view from TW1-8T would be a major adverse effect (REP-540).

4.401 The outline Ecological and Landscape Management Plan (ELMP) referred to earlier, was also a matter regarding which different

views were expressed by the applicant and other parties. The ELMP is secured by Requirement 28 and 29 of the application DCO, but WSCC and NE were of the opinion that it did not provide enough clarity regarding the approach to be adopted towards mitigation of and compensation for ecological effects and that it did not specify sufficiently, or at all, what elements of works were to be carried out at what stage, ie during and following construction activities. WSCC called for more robust and clearly identified principles to be set out in the relevant ELMP framework.

- 4.402 As a result, a revised outline ELMP was submitted by the applicant. WSCC subsequently confirmed its agreement to the approach proposed in the updated document (REP-540). The relevant ELMPs for land outside and within the National Park are secured by requirements 28 and 29 of the recommended Order. The ELMP(s) are discussed in more detail in the section of this report that considers effects on biodiversity.
- 4.403 WSCC and the SDNPA were concerned that an arboricultural survey had not been undertaken to inform the assessment of the impact of the proposals upon trees and hedgerows in their respective administrative areas. WSCC pressed for completion of an arboricultural survey before close of the examination. This was not agreed by the applicant. However, in response to the concerns expressed, the applicant did submit an outline 'Arboricultural Method Statement' to the examination (REP-498). This mechanism would be secured by Requirements 28 and 29 of the recommended Order. Both WSCC and the SDNPA agreed with the methodology contained in this outline statement at the DCO hearing (HR-078 to HR-082).
- 4.404 In response to concerns raised by interested parties living close to the proposed location of the substation near Bolney about the potential effects upon existing mature trees and hedgerows located on the proposed site, the applicant updated its 'Onshore Substation Design and Access Statement' (REP-567) to include the commitment that it would *'seek to retain as much of both tree and shrub lines as practical. The design of the substation and the protection of trees to be retained will be in accordance with BS: 5837 2012 Trees in Relation to Design, Demolition and Construction.'*
- 4.405 The Panel acknowledges these and other amendments to the Design and Access Statement (discussed in greater detail in the section on construction and operational effects and in the section on good design). However, the Panel remained of the view that specific mitigation is needed within the terms of the Order in order to safeguard as far as possible the landscape character of the substation site. This relies heavily upon the trees and hedgerows located within it. The Panel therefore proposed the inclusion of a new subsection (h) in the draft DCO at Requirement 11(2), Provision of Landscaping of the submitted Order. This

wording amendment sought to ensure that the landscaping scheme for the substation included:

'(h) Details of existing trees and hedgerows to be removed and justification of their removal, including evidence to show the removal is the only practicable course of action.'

- 4.406 The applicant did not agree to this new wording. It argued that representations from interested parties had already been responded to, by the inclusion of appropriate wording in the design and access statement, as discussed earlier. It was also argued that this was an aspiration which depended on detailed design and it was therefore not appropriate to include the wording in the requirement itself. The applicant argued that it would have to demonstrate how the proposed landscaping scheme accords with the onshore design and access statement in order to gain approval.
- 4.407 The Panel is not convinced by these arguments. The Design and Access statement applies to the whole of the onshore Order limits, whereas the objective of the addition to Requirement 11 is to focus specifically on justifying removal of existing trees and hedgerows at the substation site. The Panel considers that a positive provision in the recommended Order that takes as its starting point the retention of trees on the site of the proposed substation is appropriate, given its location and the views expressed by interested parties in its vicinity. Requirement 11(2)(h) is therefore included in the recommended Order.
- 4.408 The wording of the requirement provides scope for the applicant to provide justification of the loss of trees and hedgerows within the substation site if their retention proves impracticable. Having regard to the visual significance of the landscape features of the sub-station site and their potential relationship to the amenity of nearby residential properties, the Panel considers that every effort should be made to retain these features where practicable. It is considered necessary to include the requirement in the Order given that the Design and Access Statement is not a document that makes statutory provisions.

Landscaping and design approval in relation to Work No 25 (Proposed Bolney substation)

- 4.409 Requirement 10 of the recommended Order makes provision for details of the layout, design, scale and external appearance of the proposed substation to be approved in writing by WSCC. Requirement 11 makes provision for a written landscaping scheme to be submitted to and provided in writing by WSCC; whilst Requirement 12 makes provision for all landscaping works to be carried out in accordance with Requirement 11. Together the Panel considers these provide a robust set of measures to ensure the

quality of the design and landscaping of the proposed substation at Bolney.

Conclusion

- 4.410 The Panel concludes that although there will be effects on the landscape character and visual receptors as a consequence of onshore cable laying, these effects would be temporary. The proposals to lay underground cables; the provision in the recommended DCO of a number of plans to be approved through the relevant planning authority including the CTMP; ELMP and the mitigation measures set out in the s106 and UU and the provisions of requirements 39 and 40 in relation to restoration used temporarily for construction would all contribute towards mitigation of these effects.
- 4.411 Funding measures included in the UU would help mitigate the effects on the relevant chalk grassland but the long term biodiversity effect remains uncertain. No evidence was submitted to suggest that any effect on the Scheduled Ancient Monument or its setting would be significant, subject to the submission and approval of the written scheme of archaeological specified under Requirement 25 of the recommended Order and the implementation of the Tottington Mount Management Plan. A full discussion on the effects on Tottington Mount Scheduled Ancient Monument is provided in the section on Heritage later in this chapter.
- 4.412 In so far as the effects arising from the proposed new Bolney substation are concerned, the package of measures secured in the DCO including the ELMP (Requirement 28) including the arboricultural method statement, together with the revised design and access statement and the provisions of Requirements 10 (Design approval onshore), 11 (Provision of landscaping) and 12 (Implementation and maintenance of landscaping) would assist in the management and mitigation of the potential landscape and visual effects of the Bolney substation proposals.

Marine and Coastal Physical processes

Policy

- 4.413 The infrastructure planning policy framework relevant to decision making regarding electricity generating stations generating more than 100 megawatts offshore, including generation from wind, is set out in the overarching NPS for Energy (EN-1) and in the NPS for Renewable Energy Infrastructure (EN-3).
- 4.414 The NPS for 'Renewable Energy' (EN-3) identifies that the construction, operation and decommissioning of offshore energy infrastructure may affect the following elements of the physical offshore environment: water quality; waves and tides; scour effect; sediment transport; and suspended solids. EN-3 indicates

that decision makers 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.' (EN-3, para 2.6.196) Consideration must be given to the burying of cables to a necessary depth and using scour protection techniques around offshore structures to prevent scour effects. Statutory consultees should be consulted in respect of appropriate mitigation.

- 4.415 In Rule 6 letter (PD-004) the Panel identified 'Marine and Coastal Physical Processes' as a principal issue in terms of: waste and debris with dredging and disposal, chemical pollutants, scouring and scour protection, effects on the coast (erosion and flooding), effects on sea defences and physical effects on port approaches (eg deep water channels). Based on that the Panel asked a series of questions under the Rule 8 letter (PD-005).
- 4.416 The applicant addresses the potential impact of the development proposal in the installation, operation and decommissioning phases and the baseline conditions at the Project site and offshore cable corridor relating to bathymetry, shallow geology, seafloor sediments, oceanography and meteorology and water quality in its ES Sections 6.1.6 'Physical Environment' (APP-063) and 6.1.7 'Benthos and Sediment Quality' (APP-064).
- 4.417 The applicant submitted a 'Scoping Report' to the Infrastructure Planning Commission (IPC) in September 2010. A 'Scoping Opinion' (APP-176) was issued by the IPC in October 2010 incorporating comments from consultees. Following a review of consultees' feedback and discussions with consultees, the applicant made modifications on impacts to the Section on 'Physical Environment'. The comments relevant to the physical environment are included in Table 6.1 (APP -063). The main changes made to the assessment are:
- Assessment updated to reflect changes to the worst case design characteristics of the proposed development including updated quantitative assessment of the long shore sediment transport regime;
 - Updated quantitative assessment of the potential reduction in wave heights in the study area and also at specified surfing locations;
 - Assessment of the potential effects with respect to relevant designated sites located within the 'far-field';
 - Assessment updated with reference to Water Framework Directive (WFD)²⁶;

²⁶The WFD (200/60/EC) establishes a framework for an integrated approach to the protection, improvement and sustainable use of Europe's water bodies, and requires all member states to achieve good ecological and chemical status of their water bodies (including coastal waters up to 1 nautical mile (nm) offshore) by 2015.

- Updates to the assessment of the likelihood of cable exposure and
 - The addition of assessment of settling velocities related to disturbed sediments.
- 4.418 The applicant's 'Physical Environment' section in the ES (APP-063) addresses the baseline conditions at the development site and offshore cable corridor relating to bathymetry, shallow geology, seafloor sediments, oceanography and meteorology and water quality during the three phases of the development. This section also summarises the applicant's view of a number of effects during that process.
- 4.419 The ES also considers that in the installation phase, the effects of foundation and cable related construction activities are of minor significance. It also suggests that in the operational phase, some of the foundation types proposed for the offshore wind farm may require scour protection to protect the foundations and the seabed from excessive erosion through the process of scour.
- 4.420 The ES indicates that the potential for scour effects resulting from the presence of foundation structures on the seabed are considered to be of limited magnitude. The potential effect upon sediment dynamics is therefore considered by the applicant to be of minor significance. The effects of scour potentially resulting from the exposure of export and inter-array cables are also considered to be of a small magnitude.
- 4.421 In the decommissioning phase it is expected by the applicant that removal of any cable in the near shore environment would have the same or a lesser impact than that which occurs during installation phase. The majority of subsea cables will be left in the seabed. Monopile foundations and the securing piles used for jacket foundations would undergo a removal process whereby the majority of the structure would be left in the seabed and cut at an appropriate depth below the sediment surface to ensure that they did not become exposed. This would mitigate the possibility of any ongoing scour. Removal of the other types of foundations is expected by the applicant to cause only minor impacts.
- 4.422 In the case of each foundation type considered by the applicant in the ES, the effect is assessed as either 'minor significance' or 'negligible significance' prior to mitigation.
- 4.423 The applicant states in the ES there are no existing or proposed wind farms in proximity to the proposed Rampion OWF. The closest UK wind farm development proposal is Navitus Bay OWF to the west of the Isle of Wight, a distance of approximately 75km and beyond the natural blockage. A number of designated sites as identified in Table 2 are shown on Figure 2 of Appendix 6.4 (APP-135) are located within the extent of 'far-field' effects. A consideration of the potential effects with respect to relevant

designated sites is provided in Section 6.3.4 of 'Physical Environment', Appendix 6.4 (APP-135).

Scour management

- 4.424 The MMO in its Relevant Representation (REP-132) stated that a scour management plan should be produced and submitted to it for approval once the sediment thicknesses have been determined and the need for scour protection assessed. It also considered the risk of cable spanning due to the risk of cable exposure, and stated that a monitoring plan would be required, including the applicant's explanation of the management plan for the relevant Rampion subsea cables.
- 4.425 It was agreed between the MMO and the applicant that a scour management plan would be produced and submitted to the MMO for approval once the sedimentary process and the need for scour protection is assessed. Condition 11(e) 'Pre-construction plans and documentation' included within the Array at Schedule 13, Part 2 of the recommended Order addresses this issue. It was also agreed that a monitoring plan would be required to describe the management plan for subsea cables. The applicant submitted the 'Outline scour protection management and cable armouring plan' (REP-499) to the examination is secured in Condition 11(e) of Schedule 13.
- 4.426 Monitoring of the scour effects is secured at Schedule 13, Part 2, Condition 17(2)(a).

Sediment morphology

- 4.427 The MMO in its response to the first round of questions (REP-338) had concerns regarding how the changes in wave climate may affect the coastline to the north of the wind farm. This issue was also addressed in the MMO's SoCG with the applicant (REP-240). The issue of impacts upon coastal processes was also raised by NE (REP-152), Lewes District Council (REP-125) and Adur & Worthing Councils (REP-012).
- 4.428 Further to discussion with the applicant at the ISH, in order to provide the MMO with appropriate assurance, it was agreed that the undertaker would carry out a monitoring programme of shoreline sediment morphology during operation of the scheme. This provision is included as an Array DML condition at Schedule 13, Part 2, condition 21 - 'Monitoring of Shoreline Sediment'. This matter is considered by the Panel as agreed between the parties.

Sediment transport

- 4.429 The impacts to the hydrodynamic regime and sediment transport patterns are likely to occur during the construction, operation and decommissioning stages of the proposed project. The potential impacts are due to blockage effect of the development to the tidal

flow wave propagation resulting in impacts on sediment transport. The applicant states in the ES, Appendix 6.4 that on the assessment of the impacts the results are considered as minor.

- 4.430 The MMO accepted this assessment and in their SoCG with the applicant (REP-240) has a sediment transport issue as a matter agreed between the parties, stated that 'hypotheses of potential impact (...) on hydrodynamic and sediment transport processes (including seabed morphology, stability or integrity of seabed features and any effect on the coastline) and the effects on physical processes related to sediment resuspension or accretion and the sensitivity assessment undertaken are appropriate.'

Disposal sites

- 4.431 The MMO stated in its response to Panel's first round of questions that there were no mention in applicant's ES whether waste material disposal sites have been considered and sought an explanation of the reason for their omission.
- 4.432 The MMO indicated in its SoCG with applicant (REP-240) and in the document submitted for the deadline of 5 December (REP-543) that one of the matters not agreed related to condition 6²⁷ of the DML at Schedule 13, Part 2 - Chemicals, drilling and debris. The MMO pointed out that the disposal of the waste arisings from drilling prior to piling had not been assessed within ES. The MMO suggested that the undertaker may seek a separate marine licence from it for such disposal. Notwithstanding that possibility the MMO advised that all potential impacts of the project should be assessed within the initial DCO application. Following discussion between the parties, MMO confirmed in response to deadline XII (REP-592) that this matter was resolved and that consequently the provision at Schedule 13, Part 1, 2(1)(d) and condition at Schedule 13, Part 2, 9(10) was updated with disposal site references.

Rock mattresses

- 4.433 The applicant in the ES Section on 'Benthos and Sediment Quality' states that 'a worst case scenario' for the cable burial depth is that 'up to 10% of the routes may need to be protected using armour stone or mattresses'.
- 4.434 The MMO broadly agreed in its RR (REP-132) with the scope, assumptions and methodologies applied by the applicant in relation to assessment of the effects of rock mattresses, but stated that a full assessment had not been undertaken for the

²⁷ Numbering of conditions has changed; the reference to this condition is used as stated in SoCG between the MMO and the applicant. The updated number for this condition as in applicant's final DCO version H is 'Condition 9 – Chemicals, drilling and debris'.

potential impacts of any rock mattresses that might be placed over the export cable. The MMO also stated in its response to first round of questions that anything more than the 'worst case' would need to be re-assessed and would require a separate marine licence and therefore the cable protection of up to 10% of the cable route must be mentioned in DCO.

- 4.435 The applicant submitted the 'Outline scour protection management and cable armouring plan' (REP-499) to the examination. This is secured in Condition 11(e) in Schedule 13.

Dredging

- 4.436 In its WR (REP-253) English Heritage (EH) indicated that in consideration of the ground preparation (ie dredging) required to support installation of the gravity base foundation design, it insisted that that all necessary geotechnical work should be commissioned having regard to clear archaeological objectives and that all analysis and interpretation should be completed and agreed with EH as a condition of any consent granted for the Rampion project. It was agreed in the final SoCG between EH and the applicant (REP-243) that any further geophysical and/or geotechnical surveys commissioned would include a clear statement of archaeological objectives. It was also agreed that a Marine Written Scheme of Investigation (WSI) would be prepared for approval by EH in respect of offshore pre-installation investigations, of preparatory works and of installation works. An Outline of the Marine WSI (REP-496) was submitted to the examination on 28 November 2013. Subsequently Schedule 13, Part 2, Condition 11 (h), as now included in the recommended Order, was updated to reflect this submission.

Flood defences

- 4.437 Issue on impact on flood defences was raised by the EA in its Relevant Representation (REP-077). Impacts upon flood defences and watercourse crossings were assessed by the applicant in Section 23 of the ES (APP-080). A SoCG was agreed between the EA and the applicant (REP-230) regarding this matter.

Wave energy transmission

- 4.438 In response to consultation prior to submission of the Rampion application Surfers Against Sewage (SAS) had raised concerns that interruption to offshore wave energy transmission and a reduction in offshore swell energy as a result of the scale and location of the array could compromise surfing conditions on the beaches popular with surfers, particularly around Brighton. The applicant considered the effects that the development may have on the swell regime in the ES. In addition to considering changes within the study area, SAS requested changes to be considered at 11 specific surf locations detailed in the Rampion ES Physical

Environment section at Appendix 6.4 (APP-135). The applicant stated that changes in swell waves at the coast are only predicted to occur in the immediate lee of the array.

- 4.439 SAS in its response to deadline IX (REP-512) highlighted that the draft Order did not include a requirement for monitoring any potential impacts on the wave height and/or direction although that issue had been raised during consultation process. SAS requested the requirement of appropriate mitigation of the effects on the sport and that consultation with SAS regarding mitigation measures be specified within the DCO.
- 4.440 Schedule 14, Part 1, Condition 17(e) of the draft DCO states that a sidescan sonar and bathymetry survey(s) to monitor wave height will be carried out.

Conclusions

- 4.441 Matters raised by IPs relating to Marine and Coastal processes have been considered and examined through written questions and during ISHS. The panel is satisfied that the necessary controls and mitigation are secured by the conditions in the recommended DMLs for all the matters raised for the SoS to conclude that the requirements of EN-1 and EN-3 have been met and there is nothing outstanding that would argue against the recommended Order being confirmed.

Navigation and Risk

- 4.442 Having regard to the content of the application and to the provisions of NPS EN-3 in relation to navigation and shipping, the ExA Panel identified the potential effects of the Rampion project upon navigation and risk as a principal issue at the outset of the examination.
- 4.443 Concerns were raised by the Shoreham Port Authority, by the Royal Yachting Association and by some local sailing enthusiasts regarding the issue of potential navigation and risk effects arising from the Rampion project. Representations were also received by parties who are fishermen and commercial fishing groups also referred to navigation hazards for fishing vessels engaged in certain types of fishing activity. These matters are discussed below.

The effect of the siting and extent of the array upon steaming times to and from particular destinations.

- 4.444 The Shoreham Port Authority was concerned regarding the need for commercial vessels transiting from the western end of the English Channel Traffic Separation Zone (south of the proposed array) to Shoreham Port (north of the array) to divert around the

eastern part of the array. The Port Authority also considered that the location of the export cable corridor meant that export cables between the array and the landfall point would cross the main anchoring area for commercial vessels waiting to enter Shoreham port. The Port Authority suggested these cables could be picked up or damaged by heavy anchors, creating problems for and risks to the vessels concerned and additional costs to the OFTO managing the transmission arrangements due to a requirement for frequent monitoring and repairs. Both the UK Chamber of Shipping and the Port Authority expressed concerns regarding these points and also regarding the implications for bad weather routing of vessels to the nearest port and regarding drifting ships, e.g. vessels 'not under command'. Both bodies were concerned regarding the likelihood of increased collision risk related to the increased density of marine traffic around the edges of the array as a result of displacement.

- 4.445 There was also some disagreement between the applicant's marine specialists and both the UK Chamber of Shipping and the Port Authority regarding the likely commercial disadvantages for individual ship operators and the extent of any resultant adverse economic effects upon the port and port-related industries. The Port Authority argued that there would be a marked increase in journey time, leading to increased operating costs and therefore a risk of adverse impact upon the existing commercial port-related activities and the port's growth plans, as reflected in the Port action plan (for example see Shoreham Port written representation REP-274 and the port Authority's response to ExA written questions REP-330 and REP-413). Similar concerns were raised in more general terms by the UK Chamber of Shipping (see UKCS SoCG with the applicant REP-244). A SoCG was also concluded between the Port Authority and the applicant which reflects the Port Authority's concerns (REP-237).
- 4.446 Towards the end of the examination the applicant put forward a proposed structures exclusion zone covering part of the eastern Order Limits area within which the proposed array is proposed to be located. The applicant's stated purpose for the structures exclusion zone was to reduce the visual impact of the array when viewed from the National Park. However the Port Authority considered that the structures exclusion zone would also have the benefit of reduction in the degree to which commercial vessels transiting from the western end of the Traffic Separation Zone to the port would be forced to divert around the array.
- 4.447 A direct point-to-point course would still be unavailable, but the length of the diversion required to navigate around the eastern end of the array to enter the port would be reduced. The Port Authority confirmed that it regarded this provision as helpful mitigation of the relevant effects upon the port.

In the light of the applicant's introduction of both the structures exclusion zone and the cables exclusion zone, together with evidence presented by both the Port Authority and by the applicant regarding the effects of the proposed array layout upon steaming times, the Panel concludes that any adverse effects upon the operation of the Port and associated port industries would be relatively small. It is not, therefore, considered likely that there would be a significant and lasting impact on the port and port-related industries, subject to the incorporation of the exclusion zones at Requirements 2(5) and 4(5) in Part 3 of the recommended Order. The issue of navigation risk resulting from displacement and increased density of traffic is considered further at paragraph 4.457 below.

The effects of turbine and inter-array cable locations in relation to fishing activities and on recreational sailing and boating

- 4.448 Local fishermen and commercial fishing groups expressed concern regarding the need for dialogue regarding the detail of the array layout in order to minimise adverse impacts on valuable fishing grounds (for example see SOcGs REP-246, REP-293, Rep-360, REP-406, REP-421 and REP-442). This concern was supported by the National Federation of Fishermen's Organisations (REP-293 and REP-406), and the Sussex Inshore Fisheries and Conservation Authority (REP-418). A Fisheries Engagement Plan was submitted by the applicant for Deadline VIII following the relevant hearings and an Outline Fisheries Liaison Strategy was also submitted by the applicant for deadline XII (REP-618). No objections were received to these documents from any IPs. The Fisheries Liaison Plan (in accordance with the outline fisheries liaison strategy submitted to the examination and a registered document secured under Article 40 in the recommended Order) is secured at Condition 11(d)(v) in the Array DML at Schedule 13 of the recommended Order and in the Export Cables at Schedule 14.
- 4.449 A number of submissions from fishermen also referred to navigation-related risks to the safety of fishermen and fishing vessels likely to arise as a result of construction of the array and the related cabling network. Risks identified included collision with turbines, snagging of gear on cables or cable protection measures such as rock armour and collisions with other vessels caused due to increased vessel densities around the edges of the wind farm accompanied by the need for close-quarters manoeuvring.
- 4.450 The Royal Yachting Association (RYA) (REP-182) and a number of individual sailing enthusiasts submitted representations raising concerns regarding the size and siting of the proposed Rampion array in relation to established cruising and yacht racing routes/areas used by local clubs, pointing out that yachting activity would be displaced in all but calm weather conditions. It was also suggested that the array would constrain navigation

along this part of the south coast. Having regard to the high density of recreational boating movements in the summer months concern was also expressed regarding potential navigation hazards resulting from concentration of vessels moving around the edges of the array. The applicant concluded a SoCG with the RYA (REP-236), which confirms its position in relation to marine safety.

- 4.451 In relation to the navigation- and safety-related submissions by fishing and recreational sailing interests there was extensive discussion of fishing at the relevant issue specific hearings (HR-037 to HR-039 and HR-049 to HR-051). Written submissions were also made by a number of parties, including the applicant. See submissions listed in paragraph 4.449 above for examples of submissions by fishing interests. Further detail regarding the implications for commercial fishing is provided later in this chapter. The applicant's position was set out in the SoCGs with the main fishing interests (for example REP-517)
- 4.452 Having regard to those submissions and to the comments of the Maritime and Coastguard Agency (MCA) outlined above, the Panel considers that the provisions of the recommended Order and DMLs require provision to be made for liaison between the developer and relevant fishing interests and for information to be made available at the appropriate time if and when the project proceeds (Schedule 13, Part 2, Condition 11(d)(v), Schedule 14, Part 2, Condition 11(d)(v)). The applicant agreed at the relevant issue specific hearing to enter into liaison with relevant interests and this is reflected in the terms of the SoCGs between the fishing groups and the applicant. It therefore appears to the Panel that the terms of the recommended Order make adequate provision for liaison and that there is scope for discussion at the detailed design stage of matters such as the appropriate micro-siting of individual turbines in order to minimise fishing impacts.
- 4.453 While positive and active liaison including timely and accurate exchanges of information would also be of assistance to local recreational sailing and boating interests, the issues around displacement of activity must be considered in relation to the overall balance of benefits and disbenefits of the project.
- 4.454 On the basis of the information available to the examination, the Panel agrees with the MCA submissions (REP-134, REP-325, REP-403) that any increased level of navigation risks associated with the increased density of vessels and displacement into the areas close to the edges of the array is not likely to be so great as to justify refusal of the application.
- 4.455 The Panel finds that the inclusion of both the structures and cable exclusion zones into the draft Order would provide relevant and important provision for mitigation of potential adverse navigation effects. Although involving a relatively small proportion of the proposed seaward Order Limits, the structures exclusion zone

appears likely to benefit both fishing and recreational sailing interests in addition to operators of vessels seeking to access the port of Shoreham. We also consider that the provisions are appropriately worded.

Effects of the arrangement and lighting of the array and offshore substation on the safe navigation by shipping and civil and military aircraft.

- 4.456 No comments were submitted to the examination by the management of Shoreham Airport nor by the Secretary of State for Defence regarding navigation risk and any related safeguards that might be required, including the lighting arrangements for the array and substations. The MCA made a number of comments in its response to the first round of ExA Rule 17 questions for deadline VII (REP-403), including the observation that risk would be increased as a result of coastal traffic being displaced towards the English Channel TSS (although due to the low number of vessels involved this was not considered to generate a *significant* level of increased risk).
- 4.457 The applicant's response was included in its SoCG with the MCA, where it was agreed that the introduction of the structures exclusion zone relating to the eastern most part of the offshore Order limits would reduce the displacement of vessels towards the TSS. The Panel notes that this amendment would reduce the level of increased risk.
- 4.458 The SoCG with MCA also notes disagreement with MCA over the level of risk associated with drifting vessels emerging from the TSS and seeking to conduct repairs whilst not under power in the marine area close to the array. The MCA noted a significant pattern of this type of activity and argued that it was highly likely that many of the incidents of this type would not be reported and that the data available was likely to represent an underestimate of the potential risk given the proposed array site's location in relation to the western exit from the TSS. The applicant was advised by MCA to consider its own arrangements for tug assistance to address these circumstances rather than rely on the methodology proposed in the ES. .
- 4.459 The applicant has not included any provision within the Order to address the risk of a drifting ship incident. However the Panel notes that no additional DML requirement was suggested by the MCA when provided with an opportunity to do so when the draft Order was subject to consultation close to the end of the examination. Accordingly no requirement is included to address this risk in the recommended Order. In the absence of any further comment from the MCA regarding the proposed wording of the Order/DMLs or any suggestion that the application should be refused on the grounds of the risk identified, the ExA does not

consider that the concern expressed in the earlier stages of the examination is sufficient to justify refusal of the application.

- 4.460 A further concern related to the lighting of the offshore array and substations, where the MCA sought specification of appropriate lighting and information for mariners. In response to these concerns the applicant (in consultation with the MMO and MCA) developed Conditions 6, 7 and 8 in the DML included at Schedule 13 to the Order in relation to the Array. Condition 6 relates to detailed arrangements for navigational practice, safety and emergency response and requires (inter alia) preparation and implementation of a project-specific Active Safety Management System, taking account of safety and mitigation measures referred to in the ES. Condition 7 requires the exhibition of such lights, marks, sounds and other aids to navigation and such steps for the prevention of risks to navigation, as Trinity House may from time to time direct. It also requires the publication of notices to mariners and other navigational warnings, liaison with and reports to Trinity House regarding progress with project delivery and the availability and deployment of aids to navigation and specifies the colours in which the various parts of the project are to be painted.
- 4.461 Although it had disputed the Port Authority's suggestion that there was a risk to safe navigation from ships' heavy anchors catching the export cables, during the examination the applicant amended the Works Plan to introduce a proposed cables exclusion zone to ensure that the sub-sea export cable corridor would avoid the main anchoring area for Shoreham port.
- 4.462 The amendments to introduce the structures exclusion zone and the cables exclusion zone are reflected in the provisions of the Array DML (structures exclusion zone) and Export Cable DML (cables exclusion zone) respectively.
- 4.463 The Panel notes that the relevant written submissions by the MCA (for example REP-403) did not support the Port Authority's proposal for an exclusion corridor through the array. In addition, although the MCA agreed that there was likely to be an increase in marine traffic density and resultant navigation risks around the edges of the array, it advised that the level of this risk was unlikely to be so high as to justify refusal of the application.
- 4.464 Relevant conditions have also been included in the recommended Order DMLs to secure appropriate navigational practice, safety and emergency response (Condition 6 in the Array DML at Schedule 13 to the Order) and appropriate aids to navigation (Conditions 7 and 8 in the Array DML). Equivalent conditions are included in the Export Cable DML at Schedule 14 to the Order at Conditions 6 and 7. Condition 3 of the Export Cable DML also restricts the total amount of cable protection comprising Work No 3A to not more than 0.092km³. Condition 11 and 12 in both the Array and Export Cable DMLs address pre-construction plans and documentation

required to be submitted for approval before construction may commence.

- 4.465 The detailed wording of these conditions was refined by the applicant in response to comments made by the parties during the examination. The revised wording of the conditions did not attract any objections from any of the parties.

Rights of Navigation

- 4.466 In relation to rights of public navigation, the applicant's submitted draft Order made provision at Article 9 for the extinguishment of those rights over places in the sea where any of the wind turbine generators and offshore substations, including their foundations, are proposed to be located. Article 9 (2) provided that the extinguishment of public navigation rights would take effect 14 days after the submission by the undertaker of a plan to the SoS showing the precise locations of the foundations of the relevant wind turbine generators and substations to be constructed as part of the authorised development within territorial waters.

- 4.467 The ExA queried in its questions whether public rights of navigation should be restored after decommissioning of the offshore structures had taken place. The absence of restoration could in future lead to doubt as to the legal status of public navigation in a number of locations across the site of the former wind farm array following decommissioning. In its response to the ExA questions at the ISH held on the 28-29 August 2013 (HR-012 to HR-018) the representative of Trinity House supported the restoration of public navigation rights following decommissioning in order to remove any uncertainty in that respect.

- 4.468 The applicant had regard to the question/response and brought forward an amendment to Article 9 to include at 9(3) the provision that:

(3) In respect of the location of any individual wind turbine generator or offshore substation, paragraph (1)... (*extinguishment of public rights of navigation*)...shall cease to have effect as soon as that wind turbine generator or offshore substation has been decommissioned and permanently removed, and the relevant rights of navigation shall resume.

- 4.469 The Panel is satisfied that this proposed wording addresses the matter in an adequate fashion. Accordingly the SoS may conclude that the policy requirements of EN-3 have been met and there are no outstanding navigation and risk matters that would preclude the recommended Order being made.

Socio-economic impacts

- 4.470 Certain socio-economic effects of the proposed development were identified as one of the principal issues of the examination, including the 'effects on tourism and recreation (land and water based), effects on local businesses (land and water based) and effects on nearby ports and commercial fishing.' The Panel asked specific questions on socio-economic issues during both first and second round questions and held an issue specific hearing.

Scope of study

- 4.471 The applicant's socio-economic assessment includes the implications of the proposed development for the local and wider economy, tourism and recreation. The area selected for the socio-economic assessment extends across the counties of West and East Sussex, including Brighton and Hove and parts of the South Downs National Park. Within this wider context, the applicant has undertaken a more detailed review (APP-085) of the implications of the onshore elements of the proposal, by reference to statutory development plans, websites and maps for a study area comprising a 2km corridor around the proposed onshore works. Section 17 of the ES considers the offshore elements of the proposal (APP-074). However, given the nature of socio-economic effects, other sections of the ES also offer certain relevance.
- 4.472 Having regard to the location of both offshore and onshore elements of the application; the identification in the ES of a permanent operations and maintenance base at Newhaven Port in East Sussex (APP-074), and the fact that the Panel did not receive representations from interested parties suggesting any disagreement with the geographical scope of the assessment, the Panel is satisfied that the socio-economic assessment area selected forms a satisfactory geographical unit upon which to base the assessment.
- 4.473 The Panel noted that the applicant's proposal did not provide clarity regarding the location of the port that would be used during the construction period if the DCO was made. In our first round questions (REP-254) we sought an update from the applicant regarding progress in the identification of the relevant port. The applicant explained that the selection could not be made at this stage of the process as it would be dependent upon various factors such as the choice of wind turbine supplier and model and type and design of foundation, and that these matters would also need to be subject to a competitive tendering process. This argument was not disputed by other parties. In the absence of any arguments to the contrary it is accepted that the ES provides an adequate assessment of the socio-economic issues arising from the proposals, regardless of where the actual construction port would be located.

Applicant's assessment of effects

- 4.474 EN-1 advises that any proposal for a nationally significant infrastructure project should consider all relevant socio-economic impacts which may include (para 5.12.3):
- the creation of jobs and training opportunities;
 - the provision of additional local services;
 - effects on tourism;
 - the impact of workers during construction, operation and decommissioning and
 - cumulative effects – if development consent were to be granted for a number of projects within a region and these were developed in a similar timeframe.
- 4.475 Table 17.13 (APP-074) summarises residual offshore socio-economic effects after proposed mitigation measures as minor beneficial effects upon employment, the economy and community during construction and operation of the project. The ES assesses minor to moderate negative impacts on tourism and shipping during the project. Other offshore impacts are deemed negligible.
- 4.476 In so far as residual onshore effects are concerned, these are summarised in Table 28.9 (APP-085). The ES identifies a minor beneficial effect during construction upon the economy and employment, a moderate adverse effect upon the South Downs Way National Trail and on tourism. Minor adverse effects are identified on public rights of way during construction and operation.
- 4.477 Submissions to the examination suggested little substantive disagreement with the broad findings of the ES in relation to socio-economic issues. However, the Panel was struck by the very limited evidence regarding socio-economic matters presented by the local authorities and other interested parties. Indeed, given what we considered to be this paucity of evidence, we asked a series of first round questions in an attempt to tease out further information from the local authorities and other interested parties in order to establish whether this might support or counter the findings of the ES.
- 4.478 Our first round questions included queries as to whether the socio-economic assessment undertaken by the applicant was adequate; whether or not there were gaps and weaknesses in that assessment, and whether or not the data contained within the assessment was sufficient or whether other additional information might be required.
- 4.479 Of the few local authorities that responded, WSCC advised (REP-335) that they could not comment further *'owing to a lack of robust evidence held by the County Council with which we can inform this issue.'*

- 4.480 Of the evidence we did receive relating to socio-economic matters, BHCC and the Joint Councils' LIR's share the view that the potential investment into the region of the project, estimated by the applicant to have a total capital value (including onshore and offshore elements) in the order of £2bn (ES 17.5.6) (APP-074), would be positive, bringing economic benefits and contributing towards renewable wind energy and carbon reduction. The position taken in the LIRs is in line with the applicant's ES which assesses the significance of direct employment opportunities flowing from the proposal as 'beneficial' within the study area (APP-074). A number of relevant representations from local businesses and residents also expressed support for the proposal on economic grounds (REP-156, REP-135).
- 4.481 The applicant estimates that the proposed project could generate up to 500 'employment opportunities' during construction; a further 184 jobs during commissioning, and 65 to 85 full time employees for operations and maintenance activities (APP-074).
- 4.482 Having regard to the points made by the local authorities in their LIRS and by the applicant in its ES, together with the relevant evidence submitted during the examination's consideration of the likely socio-economic effects of the proposal, the Panel finds that the geographical scope of the applicant's assessment provides a reasonable basis for the assessment and that the methodology applied in the assessment is appropriate.

Operations and Maintenance Port

- 4.483 All the submitted local authority LIRs refer to the wider benefits to the area of the proposal to host the operations and maintenance base at Newhaven, recognising that this could offer opportunities for regeneration of parts of the region, enhance the port's future and provide employment through potential contractor and sub contractor jobs, as well as bring a positive knock-on effect in terms of spend on local accommodation, food and drink. Although Lewes District Council, within which Newhaven is located, did not provide a LIR, a senior Council officer spoke at the ISH held on Socio-economic matters. He indicated that there was strong support from the Council for the establishment of Newhaven as the Operations and Maintenance port (O and M) and that the Council welcomed the positive economic benefits that the Council considered would flow from this development in terms of training and skills (HR-048-052).
- 4.484 As discussed earlier, there are statements in the ES regarding the proposal to locate the O and M port at Newhaven. The Panel also heard evidence at the hearing confirming that conversations have taken place between the applicant and Lewes District Council in this regard.

4.485 It is clear that the potential for the O and M port to be based at Newhaven and for related benefits lies outwith the scope of the application. Up to the close of examination it appeared that, although the applicant and Lewes District Council (the relevant local authority) had held initial discussions there was no formal commitment to locating the port at Newhaven. Development is possible, but not certain. The location of an O & M development in Newhaven may be consequent upon the elements of the Rampion project within the application. In the absence of any formal commitment the Panel considers that the prospect of this particular economic benefit can be given very limited weight in the overall assessment of net socio-economic effects.

Jobs and Skills

4.486 BHCC and the Joint Councils discussed the importance of securing economic benefits locally to assist in boosting regeneration efforts (REP-225, REP-227). This was particularly the case given the profile of some parts of the area for example in Worthing and Adur, where the Council indicated that unemployment and skills levels were a matters of concern and where they explained there was significant deprivation in areas such as Shoreham-on-Sea (REP-227).

4.487 The Panel explored the steps that the applicant was taking to secure jobs and enhance skills locally. A number of first round written questions were asked in order to look into these matters. In response, in addition to referring to the location of the O and M port at Newhaven (discussed previously in this section) the applicant explained the work of the Supply Chain Project led by Marine South East. The declared purpose of this is to identify opportunities for local businesses to supply services should the DCO be made.

4.488 The Panel sought to understand how the Supply Chain Project would be secured in the applicants DCO. The applicant argued that given its assessment in the ES that there would not be significant negative socio-economic impacts arising from the project, it was unnecessary to propose any DCO or DML requirements or conditions or a development agreement other than the diver management plan and fisheries engagement plan. Equally, the applicant stated that it was unnecessary to include socio-economic effects within any s106 agreement or Unilateral Undertaking, given its assessment that there would not be significant negative socio-economic impacts arising from the Rampion proposal. The Panel notes that socio-economic effects are not included within the s106 with neither WSCC nor the UU for the benefit of the National Park. The content of both legal obligations are discussed in more detail in the section on appropriateness and necessity of any planning obligations with local planning authorities earlier.

- 4.489 This response was at odds with a call from the Joint Councils in their LIR for the inclusion of a requirement in the DCO relating to a Training and Employment Management Plan to be submitted prior to commencement of works, should the DCO be made (REP-227). This suggestion was echoed in the written representation from Adur and Worthing Councils (REP-251). The Panel pressed the applicant to explain its position in respect of including a Training and Employment Plan in the application DCO as part of its second round written questions and at the Socio-economic ISH (HR-048 to HR-051). Whilst the applicant provided yet further detail in relation to the Supply Chain Steering Group (REP-472) it did not agree to the inclusion of a requirement in the application DCO to secure a training and employment plan. In its view, this would be unnecessary, given its assessment that there would not be significant negative socio-economic impacts as discussed above.
- 4.490 The Panel was not satisfied with this response and proposed new drafting requiring the applicant to prepare an Employment and Training Plan for approval by WSCC as part of the suite of plans identified at Article 40 of the application DCO. The Panel were concerned that without this provision, it would not be possible to secure socio-economic benefits from the proposal locally and thus meet the concerns expressed by the Joint Councils and Adur and Worthing in their representations.
- 4.491 The applicant was consistent in its argument (REP-603) that the draft requirement was not necessary, given the findings of the ES that no mitigation for socio-economic effects was required. At the very end of the examination, WSCC had adopted a revised position on the matter (REP-629) confirming that:
- 'whilst the County Council recognises the value of an employment and training plan and supports the Rampion Supply Chain Steering Group being engaged in the process and working closely with E.ON to maximise employment and training opportunities arising from this development, if approved, WSCC is content that these benefits can be achieved outside of the DCO process.'*
- 4.492 Having regard to the provisions of section 5.12 of NPS EN-1 and the evidence presented to the examination in relation to the likely socio-economic effects of the proposed Rampion project, the Panel considers that the Supply Chain Steering Group could have potential to play an important role in identifying opportunities to embed the local supply chain into the process of construction and operation should the DCO be made. The Panel has had regard to the reasoning set out by the applicant and to the late representation received from WSCC in respect of the training and employment. The Panel accepts that the local authorities, led by WSCC, would work directly with the applicant to secure jobs and skills locally should the Order be made and therefore concludes that the applicant's provisions in the DCO relating to this matter adequately address the issues raised and it is therefore

unnecessary for a provision for a training and employment management plan to be included within the recommended Order.

Tourism and recreation

- 4.493 Given the location of the proposed offshore elements of the project in terms of proximity to the Sussex coastline, Heritage Coast and seafronts of Brighton, Worthing and other settlements, and the fact that the proposed route of the onshore cable corridor would traverse part of the National Park, the potential socio-economic effects on tourism and recreation were identified as an issue that the Panel wished to examine in more detail.
- 4.494 There was little disagreement amongst interested parties over the assessment in the ES of the importance of tourism to the local economy (APP 075). An officer of BHCC highlighted the value of the seafront as a major destination for tourists and day trippers and also explained the council's support for the proposals (HR-048 to HR-052). The council considered that the proposed offshore wind farm could raise the awareness of renewable energy locally, which would be in line with the council's aim of delivering all energy via renewable technologies. The SDNPA referred to the value to the economy of the National Park as a whole, attracting some 46.3 million recreational day visits per annum in 2011-2012, equating to £454m (REP-226).
- 4.495 Both BHCC and the Joint Councils shared the view that the wind farm could become a tourist attraction and that the possibility of a visitor / interpretation / education centre should be explored in order to make the most of the proposals. Whilst the applicant has not included a proposal for a visitor centre as part of its application for development consent, it indicated that it would be willing to enter discussions with the local authorities. The outcome of such discussions was unknown at the close of examination and accordingly the Panel gives no weight to this point in its overall assessment of the project application. However, the Panel finds that any initiative to build upon any tourism and visitor interest in renewable energy would be a positive step for a key part of the area's economic base.
- 4.496 In so far as negative effects on tourism and recreation are concerned, the Panel approached this matter in relation to two discrete areas. First, the Panel sought to consider any effects on tourism and recreation outwith the National Park, and second to consider effects on tourism and recreation within the National Park. This approach has regard to the statutory purposes of designation of the National Parks, as set out under Section 5 of the National Parks and Access to the Countryside Act 1949, including the purpose of promoting opportunities for the understanding and enjoyment of the special qualities of the National Park discussed in the section on landscape and visual impact.

- 4.497 The evidence submitted in relation to the likely tourism and recreation relating to socio-economic effects of the proposed Rampion project in areas **outside** the National Park was limited. Amongst specific matters raised, the Joint Councils and BHCC raised concerns relating to the impact during construction on recreational bathers and swimmers and the impact of the landfall and of the cable corridor construction works on Brooklands Golf Course (REP-225, REP-227).
- 4.498 Some relevant representations from interested parties also expressed similar concerns (REP-198). Following investigation of these matters through written and oral questioning, the Panel is satisfied that the mitigation measures proposed by the applicant such as regular contact and consultation with local authorities and the local community and clear signage to explain why and for how long parts of the beach would be closed; would help to address these concerns, although there would be no scope for mitigation of the effects on the municipal golf course during construction except to construct the cable corridor as quickly as possible and then to restore the playing surface as effectively and efficiently as is practicable. It is therefore likely that the golf course would not be available to users for a number of months.
- 4.499 The Panel finds that the residual effect upon tourism during the construction phase would be no worse than 'moderate' as summarised in the ES Table 28.9 (APP-085). This is because the effects on tourism would be restricted to those specific areas impacted by the construction activity for the duration of works only. Although significant for a period of months, the effects should be capable of adequate mitigation and of control by the relevant local authority. Furthermore, the local authorities broadly agree with the ES assessment conclusions that, on balance, while there may be some adverse effects on tourism in the coastal resorts and in the National Park areas overlooking the proposed Rampion offshore wind farm, there appeared to be consensus that the overall net socio-economic effects are likely to be positive. The Panel finds no reason to disagree with that broad assessment.

Relationship between visual amenity and tourism

- 4.500 A related matter raised by interested parties is the link between the effect of the proposed wind farm upon visual amenity which in turn, some interested parties argue, might affect the desirability of the area as a tourist or recreational destination. BHCC encapsulated this point in its LIR: 'development out to sea where currently there is none, may be perceived to bring a detrimental sense of enclosure to the seascape' (REP-225). Countering this concern, the applicant argued that visits to seaside resorts are only partially driven by beach use and as such any change to visual amenity should be seen in the wider context of why visitors are in the area (APP-074).

4.501 The Panel's assessment and findings regarding the visual aspects of the proposals are set out in earlier in this chapter. The Panel does not find strong evidence of the likelihood of serious adverse effects upon the tourism economy submitted from the relevant local authorities, all of whom appeared broadly in support of the proposed project. Accordingly we find that the effects on the tourism and visitor economy outside the National Park are likely to be limited in extent and not so damaging as to lead to significant effects upon the wider economy of the relevant resorts nor upon any of the coastal and National Park visitor facilities that have been considered in the assessment and in the Panel's accompanied and unaccompanied site visits.

Purposes of the National Park relevant to tourism and recreation

4.502 In its various submissions the SDNPA recognised that the proposed wind farm could bring economic and social benefits and that this would be in line with the statutory duty of the Authority to foster economic and social well-being within the National Park. However, it indicated that it did not consider the social and economic benefits to carry an overriding weight should the SDNPA consider the proposal has significant harm in other respects (REP-226).

4.503 The Panel considers that the position adopted by the SDNPA is in line with the Authority's statutory role as set out in Section 5 of the National Parks and Access to the Countryside Act 1949.

Section 5 of the Act requires that –

'(1) The provisions of this Part of this Act shall have effect for the purpose—

(a) of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and

(b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.'

4.504 Following the Sandford Committee's Review of National Parks an amendment was made in the Environment Act 1995 s11A(2) which requires that:

'In exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall have regard to the purposes specified in subsection (1) of section five of this Act and, if it appears that there is a conflict between those purposes, shall 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.'

- 4.505 With this caveat in mind, in so far as negative effects on tourism and recreation are identified, the SDNPA pointed to the lack of available accommodation within the National Park close to the proposed route of the cable corridor. The consequence might be a possible constraint on stay-over visits to relevant parts of the Park due to restricted visitor bed spaces. In particular, the SDNPA identified potential for competing demands from tourists and construction workers during the summer months (REP-226). The SDNPA also highlighted a need to consider the impact of 'loss of amenity and tranquillity in areas immediately adjacent to the cable route', suggesting that these concerns should not be considered lightly, given the marginal nature of many rural businesses dependent upon visitors.
- 4.506 Section 27 of the ES (APP-084) confirmed the likelihood of significant short term adverse construction noise/disturbance effects upon areas along or close to the cable corridor and significant adverse long term visual effects upon the National Park and Heritage Coast (APP-083). The Panel has given careful consideration to the information submitted by the applicant and to all submissions regarding the likely effects upon the National Park, including those made by the SDNPA and NE.
- 4.507 Taking all relevant points into account, the Panel does not agree with the analysis in section 17.5.35 (APP-074) of the ES which when considering the impact on the South Downs states that '*the introduction of a windfarm 13km out to sea is unlikely to have a serious impact on those elements of the rural experience – the scenery and landscape, peace and quiet, and lack of crowds ... that are the main draw to the area*'. This is because the Panel's site visits confirm the applicant's own ES conclusion and the cases put by the SDNPA and NE (set out in the section on landscape and visual impacts) that there would be significant adverse visual effects on the National Park, in addition to the adverse short term effects of construction of the onshore export cable corridor through the National Park. These matters are discussed in detail under construction impacts and the landscape and visual impacts sections of this report.
- 4.508 In view of all the relevant information made available to the Panel, it is the Panel's judgement that although there would be some impact on tourism as a result of the short term construction impacts and the longer term significant landscape, seascape and visual impacts, the mitigation measures discussed in the section on landscape and visual impact, including the 'structures exclusion zone' and the application of design parameters and design principles to the design of the offshore array, would afford of mitigation of the visual impact on the National Park and Heritage Coast.

Conclusions

- 4.509 The Panel agrees with the applicant's broad ES conclusions in relation to the socio-economic effects of the Rampion project proposals. The Panel notes the absence of provisions in the DCO or any positive provisions in the two planning obligations relevant to offsetting potential socio-economic effects but does not consider that of itself this is so significant a matter as to preclude or delay the making of the Order.
- 4.510 The Panel considers that outside the South Downs National Park the effects on tourism would be limited in extent. Within the National Park, some areas would experience a change in view. However, the mitigation proposals touched on above and discussed in detail in the landscape and visual section of this report, would afford some level of mitigation of the impact. It is therefore the Panels view that the effect of the proposed Rampion project on tourism is not so significant a matter as to prevent the Order being made.

Traffic and Transport

- 4.511 The applicant's ES traffic assessment indicates that during operation the development would '*generate virtually no traffic*' (APP-086) and accordingly that the proposed transport strategy and mitigation of the adverse effects are restricted to construction of the proposed onshore elements of the array.
- 4.512 In relation to the construction period, the applicant estimates that the cable route construction period would last 28 months, the landfall works approximately 8 weeks, and the proposed onshore substation approximately 24 months (APP-086). The traffic forecast for the wider study area, including the cumulative effects of other significant developments, indicates low sensitivity to increases in traffic during construction (APP-086). The applicant finds that the worst case scenario demonstrates no significant adverse effect in respect of the traffic and transport proposals (REP-254).
- 4.513 Three main elements are considered by the applicant to generate vehicular movements on the public highway and on third party land over the assessment period. These include:
- works in relation to landfall;
 - works in relation to laying of the onshore underground transmission cables, (divided into 8 sections for ease of planning and implementation) and
 - works in relation to a new onshore substation and associated cabling.

4.514 The applicant's proposals for managing and mitigating the effects of bringing materials and workers to the project during construction are set out in Section 29 of the ES (APP-086). In outline these elements include:

- Encouraging HGVS to use an advisory lorry route network (subject to agreement with the contractor and relevant highway authorities);
- Establishing a main construction compound at Edburton Road, for use throughout the construction period providing a central point of management;
- Establishing a number of satellite compounds for 'section specific' activities that would only be used whilst that section was under construction. Neither the exact location of the satellite compounds, nor the precise number of satellite compounds are identified in the ES (APP-086). It should be noted that 'satellite compounds' were subsequently substituted and differentiated in the applicant's submissions during the examination with references to 'laydown areas' and 'HDD entry and exit compounds'.
- Limitation of disruption to traffic and the railway network and avoidance of potentially difficult hydrological conditions would be achieved through the use of HDD techniques in four main areas. These are proposed to be located where the cable crosses two dual carriageways, the river Adur and a railway line. The applicant assumes that the HDD compounds for entry and exit would be shared with the satellite compounds, although this was not confirmed in any detail as the applicant indicated that these details would be for the appointed contractor to decide (APP-086).
- Potential use of HDD techniques in other locations depending upon site conditions.
- Side accesses from the adopted highway to the working width of the cable route sections. The locations of the side accesses have not been identified in the ES, other than two side accesses south of the railway line agreed with the local authority.

4.515 Having regard to the range of mitigation and regulatory measures now incorporated by the applicant into the recommended Order in response to the Panel's questions and points raised by IPs during the examination, the Panel is satisfied that sufficient controls are incorporated into the Order provisions to enable the relevant local planning and highway authorities to regulate the potential effects of construction compounds to be constructed within the Order limits, including their landscape, visual and traffic impacts.

- 4.516 A Construction Traffic Management Plan (CTMP) would operate to mitigate the effects from traffic and transport. The CTMP would include details on vehicle routes, vehicle types, routes for abnormal loads and site accesses. It would be signed off by the relevant highway authority, WSCC in consultation with the Highways Agency, prior to commencement of works.
- 4.517 In so far as the transport proposals relate to the proposed Bolney Substation, the applicant proposes (APP-086) to:
- establish a site compound at/adjoining the proposed new substation site for the duration of the works. This would include messing facilities, storage of materials, equipment and offices. The applicant suggests that this site compound might also be used as a compound for the section of route adjacent to the proposed substation, although this is not confirmed in the ES;
 - create a construction access from Wineham Lane across private land to the north of the existing National Grid substation, to the site. This would be in place throughout the construction period of the substation estimated by the applicant to be 24 months;
 - use Bob Lane for a temporary period of 4-6 weeks, whilst the construction access was being laid and for the delivery of plant and materials needed for the construction access.

The adequacy of the transport proposals

- 4.518 Both the Highways Agency and WSCC²⁸ agree in their SoCG concluded with the applicant (REP 231, REP-654), that the ES includes an appropriate assessment of the effects of the project on the transport environment; that the mitigation measures, as set out in section 29 (APP-086) of the ES, are appropriate and suitable; and that their implementation would reduce transport impacts.
- 4.519 The Panel did not receive any specific objections from interested parties in so far as the overall transport strategy proposed by the applicant was concerned. WSCC also confirmed its view that the proposals would not result in any significant impacts on the highway network that could not be overcome through mitigation measures (REP-227). However, they declined to suggest a detailed scheme of mitigation measures, given what they considered to be an absence of detail in the transport proposals which in WSCC's view made the assessment of effective mitigation offset measures difficult to quantify.

²⁸ It must be noted here that the SoCG between WSCC and the applicant is one of the documents that was not published during the examination and that other interested parties will therefore not had an opportunity to comment regarding its contents as discussed in chapter 1 of this report.

4.520 Given this general concern with the lack of detail available in relation to the transport strategy to be pursued in delivery of the project, the Panel sought more detailed information from the applicant regarding a number of aspects of the traffic and transport proposals. The applicant's response (REP-254) included submission of a new technical note detailing the 'worst case scenario' in relation to traffic flows on each section of the cable corridor. This submission was considered by the Panel to be helpful in clarifying elements of the ES and went some way to addressing concerns regarding the perceived paucity of traffic and transport information and strategy.

Construction Traffic Management Plan (CTMP)

4.521 Implementation of the CTMP would be secured by Requirement 31 of the recommended Order. The Panel notes that the submitted outline CTMP (REP-379) does not include reference to a Workforce Travel Plan, contrary to the commitment made by the applicant in response to first written questions (REP-254) and as agreed in the SOCGs with WSCC (REP-654) and Twineham Parish Council (REP-423). However, the Panel notes that that Requirement 31 (f) does identify the need for a workforce travel plan. We are therefore satisfied that a Workforce Travel Plan is properly secured by this provision.

4.522 Requirement 31 of the recommended Order is also discussed later in this section in relation to construction compounds and laydown areas. The Panel is satisfied that the CTMP is properly secured in the recommended Order.

Access to businesses

4.523 The Panel received a limited number of representations from interested parties concerned about the potential effects of the proposed project upon access to businesses including those on local industrial estates, for example if the Western Road in Lancing were to be closed in order to provide access for project construction traffic. Further information was sought from the applicant regarding this point. In response, the applicant confirmed that it was not proposing to close any highways during construction. The applicant also confirmed that the CTMP would ensure that access was available to all businesses and residents throughout the construction period (REP-254). The Panel is satisfied that this response provided helpful clarification and adequate assurances in response to the concerns raised by interested parties.

Public Rights of Way

4.524 In relation to Public Rights of Way (PRoW) WSCC considered that the measures put forward in the applicant's PRoW strategy would be adequate to minimise the inconvenience and loss of access to

PRoW users (REP-335). Requirement 15 of the recommended Order includes provision for the submission of a PRoW diversion and closure scheme to be provided to the relevant highway authority (WSSC) for its approval. This scheme would accord with the PRoW strategy submitted with the application and would include the public rights of way specified in Schedule 4 of the DCO save for the National Trail in the National Park.

- 4.525 The SDNPA had concerns that the lack of detail in the application hindered an assessment of the impacts on PRoW in the National Park (REP-226). In response the applicant introduced a specific new provision in relation to the National Trail in the National Park. This would ensure that no stage of the connection works would commence in the National Park until a National Trail diversion and closure scheme was agreed by the SDNPA. This provision can now be found at Requirement 16 in the recommended Order. In the Panel's judgment Requirements 15 and 16 taken together provide adequate mitigation of the proposed project's likely effects on the National Trail and PRoW in the National Park during construction should the DCO be consented.
- 4.526 The Panel is satisfied that this response addressed the concerns of interested parties in relation to Public Rights of Way.

Traffic in the vicinity of the proposed Bolney substation

- 4.527 The majority of representations we received in respect of traffic and transport matters were in relation to the effects of traffic in the vicinity of the proposed substation at Bolney. Interested parties were concerned about the effect on public highways that would be used for access during the construction period. Main concerns centred on the potential volume of construction vehicles in the area together with the proposed separate substation temporary construction and long-term operational accesses (REP-039, REP-118, REP-020, REP-158).
- 4.528 Particular concerns were raised regarding the need to ensure that construction vehicles should not use Bob Lane given its constrained width (REP-215, REP-129) and regarding the proposed construction access from the substation site to Wineham Lane and thence to the A272. In relation to the latter, a typical submission was that from Bolney Parish Council which expressed concerns that construction and delivery vehicles entering and leaving Wineham Lane at its junction with the A272 would create road hazards. The A272 was described by Bolney Parish Council (REP-027) as 'an extremely busy road'.
- 4.529 In order that the Panel could understand the concerns of interested parties in the vicinity of the proposed Bolney substation, we undertook a number of site visits to the area at different times of the day and evening, including one in the company of IPs, many of whom were local residents. The Panel

took note of the rural setting, the mature hedgerows and trees which provided dense screening of the existing National Grid substation from the public highway and the relative proximity of low density, private housing located in the area.

- 4.530 The Panel observed that Bob Lane is a narrow country lane characterised by high hedges, sharp bends and limited width. The Panel agrees with the observations made by WSCC that Bob Lane has 'a number of deficiencies in highway terms' and the position expressed by WSCC that the Council would 'certainly not recommend that construction traffic use Bob Lane to access the site' (REP-420). We also noted that Wineham Lane is significantly wider than Bob Lane and that it is the road that vehicles use to access the existing National Grid substation from the A272.
- 4.531 The Panel observed during its site visits the difficulties experienced by the drivers of vehicles attempting to exit Wineham Lane to turn right onto the A272 or to go straight across the junction with the A272 due to the heavy volume of traffic using that section of highway. The Panel acknowledges that the SoCG agreed by WSCC and the applicant indicates that a Road Safety Audit of the construction traffic route and of the A272/Wineham Lane junction would be undertaken should the Order be made (REP-654). Although this is not secured specifically in the Order, the Panel is content that road safety issues would be a key consideration for the local highways authority in agreeing to the detail of any finalised road traffic scheme.
- 4.532 In so far as the volume of traffic that is likely to be generated during construction of the proposed substation, Table 29.6 of the ES provides a breakdown of likely HGV movements. The applicant forecasts that on average, deliveries to the substation would not exceed 40 vehicles per day, although as this figure is an average estimated over the 24 months of construction, actual vehicle movements on any one day would vary over the course of the construction period depending on the distribution of more intense and quieter periods of construction activity.
- 4.533 The applicant explained that HGV deliveries to the site would be controlled through the provisions of the CTMP. The applicant would discuss appropriate control measures with WSCC and consider 'additional measures' that might help to reduce impacts upon near neighbours with the Substation Local Liaison Group (LLG) (REP-366). The draft terms of reference of the substation liaison group were put before the Panel (REP-373). Although the applicant makes clear that it is not 'legally bound to make changes to the design, mitigation or construction of the Project in response to the points raised by the LLG', the Panel considers the LLG to be a positive measure with potential to enhance dialogue between parties should the DCO be made.

- 4.534 The applicant also confirmed that various measures under discussion with WSCC were included in the SoCG with Twineham Parish Council (REP-423).
- 4.535 Having regard to the vehicular estimates provided by the applicant and not challenged by any other party, the Panel finds that whilst there would be a very significant increase in the number of vehicles in the vicinity of the proposed substation during construction, this effect would apply principally to the northern end of Wineham Lane between the junction of the temporary substation construction access and Wineham Lane and the junction of the A272 with Wineham Lane and that this increase would only be evident during the construction period. These factors would limit the extent of any disruption caused by use of Wineham Lane by construction traffic. Requirement 26 in the recommended Order (Construction Environmental Management Plan) makes provision at 26(2)(h) for an environmental management plan, enabling WSCC to secure management measures such as wheel washing and dust suppression measures to mitigate the potential effects of construction vehicle movements on nearby residential properties and the wider local environment.
- 4.536 The Panel also notes the inclusion of Requirement 31 (d) of the recommended Order, which provides for the applicant to notify the relevant highway authority 72 hours in advance of abnormal loads that might cause traffic congestion to the local road network. The applicant anticipates that there would be 4 abnormal load deliveries during the construction of the substation, necessitated by the delivery of the four super grid transformers. The applicant also anticipates that these loads would be delivered at night (REP-366).
- 4.537 The Panel finds that, taken in combination, measures provided in the recommended Order would assist in managing and mitigating the impacts of traffic in this part of the study area, accepting that they would not remove a significant increased traffic load over the substation construction period.
- 4.538 The Panel understands that there would also be a short period during which construction vehicles would access the site via Bob Lane. The Panel acknowledges the views of interested parties that use of Bob Lane is not satisfactory for the purposes of extended use by construction vehicles and accepts that this is so, but on balance considers that its temporary use over a short period of 4-6 weeks would be justified in order to enable the construction of a more suitable temporary highway access from Wineham Lane for the remaining duration of the construction period.
- 4.539 The section on construction and operational effects included earlier in this chapter discusses issues such as noise and working hours as they might affect residents and residential properties in the vicinity of the proposed substation site.

- 4.540 Having considered all the relevant information, the Panel does not consider that matters relating to construction traffic in the vicinity of Bolney substation are of a magnitude that would prevent the Order being made.

Other traffic and transport matters

Construction Port

- 4.541 The ES does not provide details of the port that would be used during construction of the proposed offshore wind farm should the SoS decide to make the Order. The applicant argued that selection of a port for the construction period would be determined during the procurement phase when the final scheme design has been fixed and the full requirements relating to construction logistics would be understood, taking account of supply chain logistics. The Panel notes that other IPs did not question the approach taken by the applicant in this regard.
- 4.542 In view of the position outlined above, the Panel was unable to gather evidence in relation to any potential effects on the highway network arising from the location of the construction port and the need or otherwise for mitigation of these effects. In order to address this issue the applicant has included a requirement in the DCO for a 'Base port travel plan' to be submitted to and approved in writing by the relevant planning authority in consultation with the relevant highway authority prior to commencement of Works No 1,2 or 3A save for any HDD works. This requirement is included as Requirement 6 in the recommended Order.

Construction Compounds

- 4.543 The applicant provided details of a number of its proposed construction compounds including the location of two larger ones (approximately 150mx150m) at either end of the cable route in Brooklands Park to the south and the proposed Bolney substation to the north. A third, smaller construction compound of approximately 100mx50m would be located off Edburton Road (north of Tottington Mount). The applicant also indicated there would be eight (four entry and four exit) compounds to be established in relation to the four HDD sites. These would have dimensions of approximately 50mx30m for HDD entry and 30mx25 for HDD exit compounds (REP-444).
- 4.544 However, the lack of detail over the location of the other temporary construction compounds (referred to in the ES and draft DCO as 'satellite compounds' and described during the examination as 'laydown areas') required to support the construction of different sections of the cable corridor was a matter of concern for various interested parties for different reasons. NE and the SNDPA argued that this lack of clarity made completion of any assessment of the potential effect on landscape

character, wildlife and habitat difficult or impossible (HR-042 to HR-046). NE went somewhat further in its observations regarding this topic by questioning whether 'the DCO can be restricted such that only those compounds that have been actually assessed are permitted by the DCO' (REP-438).

- 4.545 WSCC was primarily concerned regarding the potential road and traffic implications associated with the location of the compounds given that, in its view, these compounds would be at the centre of vehicle movements and would storage for 'lorries, tractors, plant, wheel washing facilities, staff, staff welfare facilities, aggregates and lighting.' (REP-227). As in the cases of NE and the SDNPA, WSCC argued that assessing the effects of the proposed construction compounds on the highway network was not possible in the absence of detail regarding location. Given this situation, in the opinion of WSCC, 'the implications for specific communities and specific roads have yet to be clarified' (REP-420).
- 4.546 The applicant maintained its position throughout the examination that it was not in a position to provide further detail either in respect of the number or location of the other compounds, arguing that these would be decisions for the main contractor should the Order be made. However, in response to concerns raised at the Landscape/seascape and Visual Impact ISH (HR-042 to HR-047), the applicant did provide more information as to the purpose and probable size of the compounds, all of which would fall within the DCO extent. The applicant also suggested that these compounds should be renamed 'laydown areas' given that they would be 'more akin to transient working areas' (REP-444). Accordingly it introduced new drafting in the DCO at Article 2 – Interpretation – in order to explain the term 'construction laydown area' and to make consequential amendments to include a provision requiring that details of construction laydown areas be included in the construction health and safety and environmental plan secured under Requirement 30.
- 4.547 Having regard to the changes introduced by the applicant and in order to ensure consistency, after some reflection the Panel considers that Requirement 31 in the recommended Order (Construction traffic management plan) needs minor redrafting to include reference to the construction laydown areas. This amendment is needed to rectify an oversight related to the late introduction into the examination of the term 'construction laydown area' as outlined above. Unless the term 'construction laydown area' is included at Requirement 31(2)(g) the CTMP might be considered inapplicable to construction laydown areas. This did not appear to the Panel to be the intention of the applicant or of any other interested party.
- 4.548 The Panel understands the concerns raised by WSCC, NE and the SDNPA in relation to the difficulty of assessing the effects of construction laydown areas. However, the Panel considers that the

provisions of Requirement 31 Construction Traffic Management Plan, combined with the minor redrafting of this requirement recommended by the Panel, would be sufficient to manage and control any temporary highway effects that may be assessed in relation to the temporary laydown area. Furthermore the Panel notes that these temporary laydown areas would be developed within the Order limits and subject to the Construction health, safety and environmental plan required under Requirement 30(2)(m).

- 4.549 Should any construction laydown area proposals fall outwith the Order limits, then those proposals would be subject to a separate planning application under the Planning Act 1990 and would accordingly be subject to regulation through a determination by the relevant local planning authority in discussion with the relevant local highway authority.
- 4.550 Having regard to the amendments made by the applicant in response to the Panels questions, and the concerns raised by interested parties, the Panel is satisfied that the wording of the recommended Order provides adequate safeguards in relation to the effects of any construction laydown areas that may be developed on a temporary basis to facilitate construction of the landward export cable corridor.

Highway Accesses

- 4.551 The applicant included new drafting to ensure that the SDNPA was consulted in relation to highway accesses in the National Park. In order to achieve this objective the original single requirement was split into two new requirements: Requirement 13 (relating to highway accesses outwith the National Park) and Requirement 14 (relating to accesses within the National Park). The Panel is content with this revised drafting and both requirements are included in the recommended Order.

Article 15 and other matters related to the DCO raised by the HA

- 4.552 In response to our final examination deadline, ten days before the close of the examination the Panel received a letter from the Highways Agency (HA) setting out one minor drafting point (subsequently agreed by the applicant and included in the recommended Order) together with several more substantive points. The latter related to Articles 15, 16, 18, 19 and 39; Schedule 1, Part 3, Requirement 33 (2); Requirement 35(1); Requirement 43; Schedule 5 in relation to vehicular access from Lambley's Lane and Schedule 12 in relation to a Protective Provision (REP-597). This was an unexpected and late development given that the HA had been in discussion with the applicant throughout the examination, had agreed a SoCG with the applicant and did not participate in any of the three hearings held by the Panel specifically in relation to the DCO.

- 4.553 The Panel issued a Rule 17 request asking the HA to provide more detail as to the reasoning behind each of the points raised, also enabling the applicant, WSCC or other interested parties to comment if they so wished. Following negotiations between the applicant and the HA a number of concessions were made by the applicant whilst the HA agreed to withdraw its objections regarding certain other matters. The one area where it appeared that no agreement was reached was in relation to Article 15.
- 4.554 In relation to Article 16 (Temporary stopping up of streets) the HA confirmed it was prepared to concede the point (without prejudice to the position it might take on the drafting of future DCOs) (REP-648). Article 18(b) (Access to works) was redrafted by the applicant to address the HA's concerns (REP-648). As the HA accepted that Article 16 is necessary, its argument in relation to Article 19 (Agreements with street authorities) no longer follows and becomes superfluous.
- 4.555 In so far as Article 39 (Procedure in relation to further approvals, etc) applies, the applicant argued the need for timely discharge of requirements, pointing out that this provision was subject to extensive discussion during the examination and that the proposed wording had been agreed by WSCC and the SDNPA. The applicant explained that it believed that the HA would withdraw its comments regarding the Article (REP-637).
- 4.556 In the Panel's judgment Article 39 is robust and meets the tests set out in Planning Guidance as currently worded. The HA submission does not demonstrate clearly why the Article is inappropriate nor why it should not be included as proposed. Accordingly it is included in the recommended Order.
- 4.557 In so far as Schedule 1, Part 3, Requirements 33(2) and 35(1) are concerned, the Panel considered whether it would be more appropriate for the suggestions made by the HA to be included within the CTMP, which is the mechanism through which the details of construction traffic management are to be resolved. On that basis the amendments to the draft order proposed by the HA are unnecessary. The applicant indicated its belief that the HA would withdraw its comments regarding this provision (REP-637). While no further comment was provided by the HA prior to close of the examination, on the basis of the information available to the Panel at close of the examination, we agree that the position adopted by the applicant appears reasonable and consider that the HA points would be most appropriately accommodated within the CTMP.
- 4.558 The HA questioned the use of the term 'local planning authority' in Schedule 1, Part 3, Requirement 43. The applicant argued that it had clearly set out the definitions used in Article 2 of the application DCO, and stated that it believed the HA would withdraw its comments on the Article (REP-637). The Panel agrees

that the applicant's use of the term 'local planning authority' appears consistent with the interpretation set out in Article 2 and agreed with the relevant local planning authorities. The Panel notes that the HA did not seek to challenge that part of Article 2 in its representations or submissions. Accordingly the Panel proposes no changes to the wording of this provision.

- 4.559 In so far as Schedule 5 of the DCO is concerned, the applicant amended Requirement 31 to address the HA's concern. The applicant stated that the works would be controlled by Requirement 31 and that the details must be agreed with the Secretary of State for Transport before any works could take place. The applicant stated that it believes the HA would withdraw its comments regarding this requirement (REP-637). Having regard to the submissions in relation to this requirement the Panel sees no reason to disagree with the applicant's reasoning in relation to this provision.
- 4.560 On the last day of the examination (Saturday 18th January 2014), the applicant provided a summary of where, in its view, matters now stood in relation to the HA's concerns (REP-643). The Panel did not receive direct confirmation from the HA that the applicant's account was correct. It is noted, however, that the HA was copied into the letter and that the Panel had also received a submission (REF-648) from the HA confirming some of the matters outlined above and the concessions that it had made.
- 4.561 The Panel has provided an account of the objections raised by the HA and of the applicant's response. In reaching its view, the Panel has taken into consideration the applicant's assurance that these matters were agreed with the HA. The HA's Rule 17 response (REP-648) reflects this assertion in relation to the position regarding Article 16 and the Panel has no reason to suppose that the applicant is incorrect in its reporting of the outcome of discussions with the HA.
- 4.562 The one matter not agreed between HA and the applicant relates to Article 15 - Street Works. Article 15 (2) states that '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.' The HA's (REP-597) position is as follows:

'We submit that as the right is statutory it is not appropriate for the Order to contain the provisions in Article 15. As best the Article is unnecessary at worst it could create confusion as to the processes that are required to be followed by the undertaker in order to comply with the 1991 Act. The relationship between the Order and 1991 Act might be better explained in the Explanatory Note. Similarly the entries and Schedule 2 for Article 15 should be deleted.'

- 4.563 Given that several of the DCOs that have been made and approved by the SoS have contained this same provision, in the Panel's Rule 17 letter dated 13 January the HA was asked to explain further why it considered Article 15 should be removed from the draft DCO. We also asked HA to explain how the applicant would carry out street works necessary to facilitate the development if the provision and the reference to Article 15 in Schedule 2 were to be deleted.
- 4.564 The HA's response was that 'it is not appropriate for such blanket powers to be given to enter on to trunk roads, given their particular status. Instead, the street works necessary to facilitate the development could be carried out by means of licences under Section 50 of the 1991 Act provided by the HA on behalf of the Secretary of State for Transport in the case of the A27 Trunk Road.' In the HA's view a s50 licence is a 'tried and tested' mechanism that would not lead to uncertainty (REP-648).
- 4.565 The applicant referred to its discussions with HA firstly regarding the general purpose of the Article and secondly regarding the application of the article to the HA and, in particular, the reasons why in its view the A27 trunk road should be included in Article 15 (REP-637). The reasons provided by the applicant were:
- That development consent orders under the PA2008 are intend to streamline the list of consents that need to be obtained for a NSIP.
 - The benefit of inclusion of the A27 in this Article is that it has certainty that a further consent does not need to be obtained for the development. It also provides more clarity in terms of timescales.
 - In practical terms, the A27 would be directionally drilled with the entry and exit points some distance from the road, therefore the applicant does not expect there to be impacts on the A27.
 - The applicant would still have to comply with the relevant requirements under sections 54 - 106 of New Roads and Street Works Act 1991 (NRWSA)(outside of the DCO process) in advance of any works.
 - To provide comfort to the HA, the applicant has included additional working in the draft DCO Version 8 to provide that: *'All works to and beneath the A27 trunk road shall be designed and constructed in accordance with the Design Manual for Roads and Bridges.'*
- 4.566 The Panel understands the HA's concerns regarding the potential logistical complexity of proposed street works to the A27 and its concern that, when an application for development consent is

submitted there may be insufficient certainty to enable a suitably worded article to be included in a draft DCO. In this context the Panel also understands why the HA considered it preferable for such works to be consented separately by way of a licence under s50 of the 1991 Act, given the tried and tested nature of that legal framework.

- 4.567 On the other hand, in the case of this particular application there does appear to the Panel to be sufficient certainty in this case regarding the nature of the works proposed under the A27 to support a provision along the lines of Article 15. The Panel also accepts the applicant's argument that the declared objective of the Planning Act 2008 process (as expressed by successive Governments) is to streamline the consenting framework relating to nationally significant infrastructure projects. Article 15 as proposed would achieve the Government's declared objective of streamlining the consenting process in relation to nationally significant infrastructure and avoid the need for a separate consent. The HA has had every opportunity to get involved at each stage of the PA2008 process, although on this occasion it has raised substantive issues at a very late stage in the proceedings.
- 4.568 Furthermore it is accepted by the Panel that any effect on the A27 is likely to be minimal given the use of HDD techniques and that the work below the highway would still need to comply with sections 54-106 of the NRWSA in advance of any works.
- 4.569 Given the late stage at which the HA made its representations regarding this matter there has been a lack of opportunity for the applicant and the HA to negotiate an agreed position in relation to Article 15. There is a pressing need for the Panel to ensure that, should the SoS be minded to make the Order, the development to be consented is capable of being delivered. Accordingly, taking into account all the relevant submissions outlined above, the Panel concludes that Article 15 should be included within the recommended Order and that the wording proposed should not be altered.

Conclusion

- 4.570 The Panel concludes that whilst the proposal does give rise to traffic and transport effects during construction, these effects would be temporary and are capable of being mitigated through the range of measures discussed above. As such the Panel is of the view that traffic and transport effects do not preclude the making of the Order as recommended.
- 4.571 The Panel further concludes that the wording of Article 2 in relation to the interpretation of 'local planning authority', Article 15 and Article 39 of the Order and Schedule 1, Part 3, Requirements 33(2) and 35(1) should be retained as proposed by the applicant.

OTHER MATTERS

4.572 Other matters which were identified during the examination are discussed below. These are:

- Commercial Fishing
- Civil and Military Aviation and Defence
- Decommissioning
- Good Design
- Grid Connection
- Heritage

Commercial Fishing

4.573 In so far as fish and fishing impacts are concerned, there were two broad areas of concern: first, effects on commercial fishing during construction, operation and decommissioning of the proposed wind farm and second, the effects on particular species during construction of the wind farm. The offshore construction period was estimated by the applicant to be between 2.5 and 3 years, including a contingency of 6-18 months (ISH held on 1 November 2013). The safety interests of the fishing industry are considered in the section of this report that addresses navigation and risk.

4.574 The Panel assessment of the potential effects of the proposed project on black bream and herring are set out in more detail earlier in this chapter under Biodiversity. In summary, the Panel is satisfied that the piling restrictions relevant to black bream and herring that were agreed by the applicant and that are secured in DML conditions 18 and 19 at Schedule 13 of the recommended Order provide adequate mitigation to safeguard these species.

4.575 With respect to the effect on commercial fishing more generally, the Panel received representations from individual local fishermen and two organisations representing groups of commercial fishing companies and fishermen in the area; the Commercial Fisheries Working Group (REP-538) and the Sussex Independent Fishermans Group²⁹ (REP-422).

4.576 A range of concerns regarding potential effects upon commercial fishing were presented to the examination. Key matters raised included concerns that the construction, operation and decommissioning of the proposed wind farm array would disturb and destroy sea bed habitat which in turn would affect fish stock; that there would be adverse effects arising from displacement of the local fishing fleet due to the number of vessels involved during

²⁹ The Commercial Fisheries Working Group was established in September 2011 and has been consulted as the project proposals have been developed. It comprises representatives from local fishermen's organisations, owners of the larger trawling and scallop dredging companies and the applicants Fishing Industry Representative. The Sussex Independent Fishermen Group was established during the course of the examination, and comprises fishermen operating smaller fishing vessels (the majority of which are under 10 meters in length).

construction of the proposed array (eg same number of fishing vessels fishing in a reduced area with greater competition for the accessible fish stocks and higher navigation risks); and that restrictions would effectively be placed upon the types of fishing activity that would be safe or practicable during operation of the Rampion offshore wind farm should the Order be made (REP-422, REP-538).

- 4.577 The various participating representatives and members of the fishing community also expressed a shared concern regarding whether they would be able to make an adequate income from commercial fishing should the project be consented (HR-049 to HR-051).
- 4.578 Although Section 18 of the ES (APP-075) contained an assessment of the effects of the proposal on commercial fishing activities, the Panel was struck by the discrepancy between Table 18.11 of the assessment, which indicates that limited mitigation measures are proposed in relation to commercial fishing effects and Table 18.2 which refers to '*appropriate and feasible mitigation measures to be discussed and agreed for the construction and operational phases with fishermen's representatives*'.
- 4.579 Given the representations received from the fishing community and what the Panel considered to be an inconsistency in the ES in respect of mitigation for commercial fishing, the Panel asked further questions as part of first round questions and at the issue specific hearing on socio-economic matters later in the examination (HR-049 to HR-051). We wanted to satisfy ourselves that the proposals met the policy guidance set out in EN-1 and EN-3 in relation to commercial fisheries and fishing and in particular para 2.6.132 – 2.6.136 of EN-3.
- 4.580 In response, the applicant proposed the inclusion of an outline fisheries liaison strategy (REP-618) as part of the certified plans referred to by Article 40. This sets out the responsibilities of the Company Fishing Liaison Officer, Fishing Industry Representative and Offshore Fisheries Liaison Officer in addition to an outline of how and to whom information would be distributed in respect of the project. The final Fisheries Liaison Plan would be submitted to the MMO for approval should the project be consented. The Fisheries Liaison Strategy (REP-618), including the engagement of a fisheries liaison officer would ensure ongoing communication with the fishing community during the construction and operation of the wind farm should the DCO be consented.
- 4.581 The applicant proposed the following wording in the application DCO for inclusion as part of Condition 11(d)(v), Schedules 13 and 14 '*a fisheries engagement plan (in accordance with the outline fisheries liaison strategy) to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to Condition 5 and to address the interaction of the licensed activities*

during construction and operation'. This condition is now included in the recommended Order.

- 4.582 In addition, the Panel noted that SoCGs were finalised between the applicant and both the Commercial Fisheries Working Group (CFWG) (REP-538) and the Sussex Independent Fishermen Group (SIFG) (REP-422). Whilst agreement over some matters had still to be reached, both SoCGs confirmed that the study area used for the assessment of impacts to commercial fisheries stakeholders was appropriate.
- 4.583 Both SoCGs also contained a commitment that the parties would 'jointly work towards an agreement' on mitigation to minimise / offset any adverse effect on the viability of commercial fisheries in the case of the CFWG and legitimately affected commercial fishing vessels in the case of the SIFG. This is in line with the guidance in EN-3 para 2.6.134 et seq.
- 4.584 In so far as financial mitigation is concerned, both SoCGs agreed that disruption payments would be offered to the fishing industry during the construction phase (and, in the case of the CFWG, the transitional phase). Disruption payments would be evaluated using a methodology to be finalised in an agreed 'Fisheries Engagement Plan'. This engagement plan was submitted to the examination (REP-464) but is not included as a registered document and is not secured by the applicant in the DCO. The Panel also notes that none of the fishing organisations or fishermen IPs asked for the Engagement Plan to be formalised in this way, although all parties were consulted regarding the wording of the Order and had the opportunity to seek its formalisation. Accordingly the Panel considers that this is a matter of trust between the parties, as set out in the SoCGs with fishing interests and in the terms of the Engagement Plan, rather than a matter to be the subject of statutory provision in an Order.
- 4.585 Having regard to the provisions included in the recommended Order in respect of the 'Outline Fisheries Liaison Strategy' together with the agreement within the SoCGs with fishing interests to 'jointly work towards an agreement' regarding mitigation in order to minimise / offset any adverse effect upon the viability of commercial fisheries and the measures set down in the SoCGs on financial matters, it is the Panels view that taken together these measures would help to mitigate the effects on general commercial fishing in line with policy set out in the NPSs. In the light of these points the Panel does not consider matters related to commercial fishing would preclude the making of the recommended Order.

Civil and military aviation and defence

- 4.586 NPS EN-1 section 5.4 sets out Government policy in relation to the effects of energy-related infrastructure development upon civil and

military aviation and defence interests. The text points out those areas of airspace around aerodromes used by aircraft taking off or on approach and landing are described as 'obstacle limitation surfaces' (OLS). OLS for civil aerodromes are defined according to criteria set out in relevant Civil Aviation Authority (CAA) guidance (CAA (Dec 2008) CAP 168: Licensing of Aerodromes). The certified Safeguarding maps depicting the OLS and other criteria are deposited with local planning authorities. Department for Transport/ODPM Circular 01/2003 provides advice to planning authorities on the official safeguarding of aerodromes and includes a list of the aerodromes which are officially safeguarded. The Circular and CAA guidance also recommend that the operators of aerodromes that are not officially safeguarded should take steps to protect their aerodrome from the effects of possible adverse development by establishing an agreed consultation procedure between themselves and the LPA(s).

- 4.587 The military Low Flying system covers the whole of the UK and enables low flying activities as low as 75m (mean separation distance). In addition military helicopters may operate down to ground level. NPS EN-1 paragraph 5.4.6 points out that new energy infrastructure may cause obstructions in Ministry of Defence (MoD) low flying areas.
- 4.588 Paragraph 5.4.7 of NPS EN-1 also explains that energy infrastructure may interfere with the operation of communications, navigation and surveillance (CNS) systems such as radar.
- 4.589 The Marine Management Organisation's Marine Planning Portal highlights a radar interference area extending from Shoreham Airport SSE over the English Channel and touching the extreme western edge of the proposed Rampion Order Limits in the area proposed to be built out with Array turbines. The Portal information also includes a MoD designated Low Flying Area extending over the south coast parallel to the northern boundary of the proposed Rampion array and approximately 5km to the north of it. The Rampion project proposals would appear to lie well to the south and not to cause any obstruction to the military low flying area. No objection has been submitted to the examination by the MoD.
- 4.590 In relation to civil and military aviation and defence interests the Civil Aviation Authority, NATS En-route plc and Shoreham (Brighton City) Airport were all consulted prior to submission of the application. No objections were made regarding any aspect of the proposals.
- 4.591 The design of the project's colour scheme and lighting would take account of the illumination and visibility requirements for OWFs set out in the relevant civil aviation legislative provisions. In particular, Requirement 7 in the recommended Order provides that the undertaker shall exhibit such lights, with such shape, colour

and character as are required by Air Navigation Order 2009, or as directed by the CAA.

- 4.592 The applicant's ES considers the issue of civil and defence aviation interests and does not highlight any issues of significance to the making of the DCO. No objections to the methodology applied in the ES were received during the examination.
- 4.593 On the basis of the information available to the Panel sees no reason to refuse the application because of likely interference with civil or defence aviation interests, nor to impose specific requirements other than Requirement 7 of the recommended Order, which provides that:

'The undertaker shall exhibit such lights, with such shape, colour and character as are required by Air Navigation Order 2009, or as directed by the CAA.'

Decommissioning

- 4.594 The terms of the applicant's submitted draft Order provided for Offshore Decommissioning at Requirement 8 of the Order but did not make provision for any decommissioning of the onshore elements of the proposed Rampion project infrastructure.

Abatement of offshore works abandoned and decayed

- 4.595 The inclusion of a provision within the Order to address any potential decay and abandonment of offshore structures is separate to any requirement for offshore decommissioning that may be imposed by the SoS in relation to the granting of any consent for it under the Energy Act 2004. Article 10 addresses the abatement of works abandoned and decayed in relation to the Array. It enables the SoS to serve notice upon the undertaker to repair, restore or remove the array or any relevant part of it and restore the site to a safe and proper condition (as specified in the notice) at its own expense.
- 4.596 During the examination, following discussion including the MMO at the ISH held on 28-29 August 2013, the applicant amended the Order to reword Article 10 in the light of the splitting of the DML into two DMLs and to clarify the position that would be applicable should the undertaker fail to comply with a notice served under the article (see recommended Order Article 10(3)). The revised Article ensures that the SoS has the power to require the undertaker 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 a notice. If the undertaker fails to comply with the notice within a period of 30 days beginning with the date of service, the SoS may take whatever steps he considers appropriate to achieve the result required by the notice and any expenditure so incurred shall be recoverable from the undertaker.

The statutory discretion to initiate offshore decommissioning would therefore lie with the SoS. Of course it would remain open to the undertaker to prepare a scheme of decommissioning and then seek consent from the MMO for those works prior to their implementation.

- 4.597 It should be noted that Condition 22 of the recommended Array DML included at Schedule 13 to the Order provides that the Array DML does not permit the decommissioning of the authorised scheme. It further provides that no authorised (offshore) decommissioning activity shall commence until a decommissioning programme in accordance with an approved programme under Section 105(2) of the Energy Act 2004 has been submitted to the SoS for approval and that the undertaker shall notify the MMO prior to carrying out such works to establish whether a marine licence is required for them.
- 4.598 Under Article 9 of the recommended Order public rights of navigation across the location of any wind turbine generator or offshore substation would be restored as soon as that wind turbine generator or offshore substation has been decommissioned and permanently removed.
- 4.599 Having regard to all the relevant information on this topic submitted during the examination, the Panel conclude that the provision for offshore decommissioning within the Order (including the Array DML) is satisfactory.

Onshore decommissioning

- 4.600 During the examination onshore decommissioning provided a significant topic for discussion. The applicant's ES assessment regarding the likely landscape and visual impact of the onshore substation, together with information in the Works Plan and Land Plan, confirm the significant scale, physical presence and industrial appearance of the proposed onshore substation that is proposed to be located in the parish of Twineham near Bolney.
- 4.601 Through its written questions the Panel sought clarification of the applicant's intent regarding onshore decommissioning and whether this measure should be provided for within the Order. Responses from a number of interested parties with interests located in the vicinity of the proposed substation, including a number of local residents and Twineham Parish Council (eg REP-628), argued that given the likely impact of the substation there should be provision for its removal at the end of the operational life of the Rampion wind farm, in order to avoid a residual eyesore and dereliction.
- 4.602 The applicant argued during the various hearings that it was likely that an alternative use would be found for the substation infrastructure beyond the life of the Rampion OWF. However it did not (or was unable to) produce any clear evidence or indication to

support this contention, including for example any credible information regarding any likely alternative use or successor user.

- 4.603 In response to the ExA's written questions and the submissions of interested parties regarding onshore decommissioning, the applicant proposed the inclusion of an 'End of Operational Life Plan'. Requirement 40 of the applicant's draft DCO revision E provided that:

'40. –(1) Upon 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.

(2) 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.

(3) The scheme under paragraph (2) shall be implemented as approved.'

- 4.604 The Panel noted that the proposed end of operational life plan did not secure decommissioning of the substation and that no information was provided regarding the likelihood of an alternative subsequent use for the substation. By the end of the operational life of the OWF the substation itself would be 20-25 years old and would therefore have reached a mature age in technological terms. The ExA found the proposed end of life plan to be unsatisfactory in these respects. The Panel also considers that leaving the future of such a large industrial installation uncertain would be unacceptable in the circumstances of the case having regard to the attractive 'green field' rural location of the proposed site, which is also located relatively near to a number of residential properties.

- 4.605 The Panel notes that the terms of the DCO would permit changes of ownership. The content of the Government's derelict land and brownfield programmes over the last few decades confirms the UK's twentieth century experience of gradual decay and dereliction across a wide range of large-scale infrastructure including energy-related infrastructure. Accordingly, the Panel sought a more prudent approach. In particular we investigated how a definitive form of environmental mitigation might be developed, based upon a clearly defined timescale for restoration of the site to its previous condition as agricultural land.

- 4.606 The Panel consulted the parties regarding a potential amendment to the DCO that sought to cater for decommissioning of the onshore substation only, either at the end of the life of the wind farm (if there was at that stage no prospect of an alternative use) or decommissioning at the end of any alternative use were one to be identified. The wording of the draft requirement was necessarily

complex to cater for both eventualities. While the suggested amendment wording set out in ExA Draft DCO of December 2013 was supported by a number of parties, the applicant argued in its response (REP 603) to suggested wording in the ExA Rule 17 request against any provision but indicated that if the ExA was minded to include a provision of this type then it should be more straightforward. It provided a wording that appears similar to the onshore decommissioning requirement in the Galloper Order that had recently been made by the SoS.

- 4.607 The ExA notes that the relevant onshore decommissioning provision in the Galloper Development Consent Order (Requirement 36) applies not only to connection works including the onshore substation but also to onshore export transmission cables. During the first ISH the SDNPA and NE did not support the decommissioning of the Rampion onshore underground export cable corridor (including four sets of three cables and related ducting) on the basis that after perhaps 25 years of operational life the landscape and ecological mitigation of the original works would have matured. Because the cables are proposed to be laid underground across land that is mainly in agricultural use, the relevant planning authorities considered it preferable to leave the relevant ducts and export cables in situ than to remove them.
- 4.608 Decommissioning could potentially introduce further large-scale disruption to the environment along the 26.4 kilometre cable corridor, including further disruption of the environment of the South Downs National Park. At the ISH into Landscape/Seacape and Visual Effects held on 31 October 2013 (HR-043 to HR-046) this position was supported by WSCC
- 4.609 The Panel has carefully considered the submissions outlined above and concludes in the light of the points made that an onshore decommissioning requirement should be included in the order.
- 4.610 While the applicant argued that any liability related to such a disused installation would fall to the undertaker at that time, no convincing evidence was submitted to demonstrate that this scenario would not give rise to a future risk that costs would fall to the public purse.
- 4.611 In the light of the information submitted regarding onshore decommissioning during the examination, the ExA concludes that it is relevant and important to have regard to the future position once the operational need for the substation to connect the electricity generated by the Rampion OWF to the national grid has ceased. Accordingly, the Panel includes at Requirement 41 of the recommended Order a provision based upon the wording consulted upon for Deadline XII. The wording is modified to be consistent with the Galloper onshore decommissioning provision with the exception that its wording focuses upon the onshore substation and excludes the onshore transmission cables. This approach is

considered to address the mitigation of the principal long-term environmental impact and to minimise risks to the public purse. The Panel considers this to be a proportionate response in the light of the information contained in the ES and the relevant evidence and submissions received. We conclude that the wording of Requirement 41 the recommended Order as modified in this way would address the need for clarify over onshore decommissioning beyond the life of the offshore wind farm.

Good Design

4.612 The criteria for the assessment of good design in relation to nationally significant energy infrastructure projects are set out at NPS EN-1, Section 4.5. These include:

- visual appearance - good aesthetic as far as possible
- functionality (including fitness for purpose and sustainability)
- sensitivity to place
- efficiency in the use of natural resources and energy used in their construction and operation
- siting and use of appropriate technologies to help mitigate impacts eg siting relative to existing landscape character, landform and vegetation, mitigation of noise impacts, design and sensitive use of materials in associated development such as electricity substations (and their contribution to the quality of the area)
- durability
- adaptability (taking account of natural hazards such as flooding).

4.613 Paragraph 4.5.3 makes it clear that it is necessary to consider the ultimate purpose of the development, together with safety and security.

4.614 Section 2.4 of NPS EN-3 sets out the technology-specific criteria for good design for renewable energy infrastructure:

(Paragraph 2.4.2) 'Proposals for renewable energy infrastructure should demonstrate good design in respect of landscape and visual amenity, and in the design of the project to mitigate impacts such as noise and effects on ecology.'

4.615 In its assessment of the extent to which the Rampion project proposals follow the criteria for good design and the related

principles set out in NPSs EN-1 and EN-3 the Panel has taken into account:

- the information contained in the ES,
- the Design and Access Statement provided in relation to the Bolney substation
- the wide range of written and oral submissions provided regarding design and visual effects, together with
- impressions gained from our site visits to the areas concerned and other visits undertaken to view existing built marine wind farm developments located a similar distance from the coastline (Thanet, Kentish Flats, Gunfleet Sands, London Array).

4.616 Earlier sections of this chapter have explored design issues in relation to different aspects of this project in some detail and as such, it is not the intention to repeat these discussions here. The section on construction and operational effects, examines matters of design in relation to the proposed substation at Bolney. The section on landscape and visual impact considers design issues relating to the offshore wind farm, including recommendation of a new element to Condition 11 of the array DML in the recommended Order, that being the introduction of design principles to be approved by MMO. The section on biodiversity includes consideration of the design elements that have been taken into account to mitigate impacts on ecology.

4.617 On the basis of the application information and having regard to the submissions and further information received during the examination, the Panel finds the design of the export cable corridor works to be consistent with the criteria relevant to good design set out in NPS EN-1 and EN3. In particular the decision to underground the cable and the selection of a route through agricultural land would, in the Panel's view, mitigate many of the potential effect of the export cables, subject to adequate mitigation of short term construction-related effects and longer term effects on trees, hedgerows and local ecology.

4.618 For the reasons set out above and at earlier sections of this chapter, in order to ensure that relevant and important design detail information is made available to the relevant LPA at the appropriate time, the Panel is satisfied that the recommended Order and supporting documentation including the applicant's revised Design and Access Statement provides the basis for a satisfactory design solution when considered against the criteria for good design set out in NPS EN-1 and EN-3.

Grid Connection

- 4.619 Section 4.9 of NPS EN-1 addresses the grid connection to the electricity network for any energy generation project. Paragraph 4.9.1 indicates that the decision-maker must be satisfied that there is no obvious reason why a grid connection would not be possible. During the examination a document entitled 'Rampion Information Statement' dated 14th October 2013 was provided by National Grid Electricity Transmission Ltd. It explained the background to the assessment by National Grid and its agreement to the grid connection for the Rampion OWF.
- 4.620 National Grid considers options for enhancing existing transmission infrastructure before options requiring wholly new transmission infrastructure. This is consistent with its statutory duty to have regard to amenity under Section 38 and Schedule 9 of the 1989 Act and promotes more sustainable development. This position is detailed in National Grid's Stakeholder, Community and Amenity Policy.
- 4.621 Initial high level designs confirmed that unless the possible interface point option is at an existing transmission substation, National Grid would need to develop a new transmission substation. If an extension to the existing transmission system is needed, National Grid would also need to develop new transmission circuit(s). National Grid and the applicant considered that options which would require National Grid to extend its existing transmission system should not be progressed if other options could be identified which would require less extensive development of new transmission system infrastructure. Taking into account a range of factors, including environmental and economic factors as well as statutory requirements, four possible interface point options were identified for comparison. The option of connecting Rampion Offshore Wind Farm to the existing Bolney substation would require the lowest volume of new transmission system infrastructure.
- 4.622 Taking account the technical, economic and environmental factors relevant to each of the four possible interface points identified, National Grid and E.ON agreed that Bolney substation should be progressed as the preferred interface point for the connection of Rampion OWF to the Transmission System.
- 4.623 In the light of the statement provided by the National Grid which set out the above points and which was submitted by the applicant (REP-384) and having regard to all other relevant evidence and information submitted during the examination the Panel concludes that an adequate and appropriate grid connection would be available to the developer of the Rampion project.
- 4.624 Despite agreement regarding the principle of the grid connection there was disagreement between NGET and the applicant

regarding the detailed siting and arrangements for the layout of the Rampion substation and associated works - in particular relating to the removal and disturbance of NGET apparatus to facilitate relevant works to construct the sub-station and grid connection. Rampion therefore submitted an application under s127 of the PA2008 seeking consent for this element of the works. The matter was eventually resolved before the close of the examination as described in chapter 7 below.

Heritage

- 4.625 In line with EN-1 paragraph 5.8.8, the applicant assessed the effects of the proposals on the historic environment (chapters 13 and 25 respectively). Onshore, the objectives of the assessment included:
- identifying known and potential archaeological and cultural heritage assets
 - understanding their importance
 - assessing the effects of the onshore proposals on these features and
 - identifying the need and scope of any mitigation that might be required
- 4.626 The study area focussed on a 1m-wide study area centred on the proposed cable corridor and a wider 25km study area surrounding the offshore wind turbine site. The applicant provided a detailed explanation of the methodology both for identifying heritage assets and for assessing the significance of any potential impact on the heritage asset, as set out in Section 25 of the ES, Table 25.6. The Panel did not receive representations disagreeing with the approach taken by the applicant to the assessment of heritage assets.
- 4.627 As would be expected with any development of the scale proposed, adverse impacts would occur and the ES provides an inventory of the heritage assets that would be affected either directly through laying of the cable or indirectly as a result of a change in their setting.

Terrestrial Heritage Assets within the 1km study area (centred on the Cable Corridor)

- 4.628 Three scheduled ancient monuments fall within the path of the cable corridor and are in relatively close proximity to each other: Old Erringham Deserted Medieval Village, the remaining part of Cross Dyke on Beeding Hill, excavated and partially removed by modern quarrying activity, and Cross Dyke on Tottington Mount.
- 4.629 Tottington Mount is of particular note as it is prominently located in the National Park on the northern slopes of the South Downs.

Despite the applicant's efforts to route the cable corridor away from heritage assets, part of Tottington Mount would still fall in the path of the cable corridor and be bisected by it. The ES Section on 'Archaeology and Cultural Heritage' describes a 'significant direct physical impact' upon the Tottington Mount Scheduled Ancient Monument, where the magnitude of effect is assessed as medium adverse and its sensitivity as high (Table 25.14) (APP-082).

- 4.630 The Panel undertook accompanied and unaccompanied site visits to Tottington Mount to gain a good understanding of the unique topography of the site and of the potential impacts of trenched cables upon the setting of this ancient monument.
- 4.631 The concerns of the SDNPA regarding the crossing of the Scheduled Ancient Monument by the cable corridor route are outlined in the biodiversity section of this chapter. EH were engaged in pre-application discussions with the applicant and local authority to determine an acceptable scheme for archaeological management. It also agreed in its SoCG with the applicant (REP-243) that it was satisfied that effort had been made to limit impact, that the project would have a 'substantial harmful effect' but 'the harm is necessary in order to deliver substantial public benefits that outweigh the harm'.
- 4.632 Section 5 of the SoCG is devoted to matters agreed in relation to Tottington Mount. These include reduction in the working width down to 15 metres in the vicinity of Tottington Mount, archaeologically sensitive excavation of the section of the monument crossed by the works, inclusion of relevant revised wording in the Order requirements and the inclusion of a requirement specifying that a written scheme of investigation (WSI) must be agreed with EH prior to commencement of construction. Requirement 25 in the recommended Order sets out provisions for approvals, for notice to be given and for a methodology for archaeological investigation to be approved in writing by EH. This requirement is linked to the provisions set out in Requirement 24, which relates to archaeology in the National Park and which specifies the information to be included within the written scheme of archaeological investigation and how the approved scheme must be implemented and overseen.
- 4.633 The mitigation measures associated with the reinstatement of the chalk grassland at Tottington Mount are secured in The Outline Tottington Mount Chalk Grassland Management Plan (TMMP), submitted by the applicant as Appendix 5 in its response to the ExA's Rule 17 request (REP-425). These measures have been discussed in more detail in the biodiversity section of this chapter. Having regard to the anticipated archaeological impacts of the project upon the scheduled ancient monument, EH advised that it considered the proposed mitigation measures to be appropriate (REP-243).

- 4.634 The Panel attached considerable weight and importance to EH's advice in respect of Tottington Mount, having regard to the desirability of preserving the Scheduled Ancient Monument and its setting. However, the Panel notes the shared view of EH, the SDNPA and the applicant that there could be risk of harm to Tottington Mount given the technical constraints of the cable corridor crossing, the topography, the need to excavate the crossing, the visual prominence of the site, the bespoke, pioneering techniques of cable laying to be used and the known difficulties of chalk grassland restoration. However, the Panel notes that EH considers the impact to be acceptable and that, subject to agreement of the methodology to be used and to appropriate archaeological supervision, it has not objected to the proposed Rampion project or sought refusal of the DCO application. It is further noted that EH is satisfied with the mitigation proposed by the applicant. All these points are confirmed in the SoCG between the parties (Rep-243).
- 4.635 The Panel considers the archaeological mitigation measures as secured through reduction of the cable route working width and the Requirements covering archaeological investigation and reporting generally and specifically for Tottington Mount are appropriate to mitigate, as far as is practicable, the harm given the technical and topographic challenges discussed above.
- 4.636 The remaining parts of Cross Dyke on Beeding Hill and Old Erringham Medieval Village would not be directly physically affected by the cable laying works. The Panel notes that the setting of Cross Dyke on Beeding Hill located to just to the south west of Tottington Mount has been compromised due to its partial excavation and removal as a result of modern quarrying activity. Old Erringham Medieval Village lies to the south of the proposed cable corridor route (Figure 25.1, Map No 4).
- 4.637 No other designated heritage assets are located within the cable corridor, although survey work has identified other non-designated heritage assets and areas of archaeological potential within it. Requirements 23 and 24 of the recommended Order provide for the submission of a written scheme of archaeological investigation for the approval of WSCC or the SDNPA as appropriate. Requirement 25 provides for the submission of methodology for those works that affect Tottington Mount and that no connection works shall commence before its approval in writing by EH. The Tottington Mount works methodology would form part of the written scheme of archaeological investigation to be provided in relation to Requirement 24.

Terrestrial Heritage Assets within the wider study area

- 4.638 Distributed widely throughout the ES study area are numerous Registered Parks and Gardens, Listed Buildings and Conservation Areas. Regard has been had to those designated assets which are

mapped in detail in the ES Figure 25.4 (APP-082). What was evident to the Panel as a result of our accompanied and unaccompanied site visits in the area during the course of the examination was the significant range of listed buildings and conservation areas located in the main within the urban areas of Worthing, Hove and Brighton, including a number of Grade 1 listed buildings located along or close to the seafront in Brighton. An important consideration for the Panel is therefore whether the Rampion project is likely to give rise to any substantial harm or loss of significance of the designated or non designated heritage assets or upon the settings of those assets.

- 4.639 The Gazetteer at Appendix 25.2 of the ES (APP-082) provides a detailed account of the importance, magnitude and significance of likely impacts identified by the applicant in relation to the terrestrial heritage assets study area and cable corridor. Predicted visual effects are assessed as either 'none' or 'negligible', other than for a number of sea front properties; conservation areas and for the two piers in Brighton. In these cases the visual impact was assessed as 'low' and the significance as 'moderate'. Table 12.11 of the ES (APP-069) summarises these findings.
- 4.640 Within the cable corridor there are no other designated heritage assets. Although survey work has identified other non-designated heritage assets and areas of archaeological potential within the corridor the Panel notes that neither the applicant nor EH has highlighted that any of the undesignated assets are likely to be of particular significance.
- 4.641 Whilst illustrative material was submitted by the applicant to indicate the effects of the proposed wind farm when viewed from heritage assets and other locations along the coast, the Panel sought further information in relation to night time effects on heritage assets. The indicative night time visualisation (REP-491) of the view out to sea from Brighton Promenade showed that marine navigation lights would be clearly visible in fair weather conditions. However, the Panel accepted the applicant's assessment that from many vantage points including Brighton's historic Promenade, the wind farm lights would be seen within the urbanised setting of the brightly lit coastline and in the context of lighting from shipping operating in the area. In addition the impact of night time lighting of the OWF array would often be mitigated by weather conditions.
- 4.642 Based on its assessment of the indicative illustrations provided by the applicant and having regard to our night-time unaccompanied site visits to the Promenade, the Panel did not consider the likely effect of night time lighting to be an over-intrusive element of the night sky. Accordingly in our judgement the wind farm lighting proposed would not affect the setting of heritage assets.

4.643 No objections were raised in relation to the landscape and visual effects upon heritage assets, including any night-time lighting effects, by either EH or BHCC. Indeed, common ground was reached between the applicant and EH, agreeing that the proposals did not constitute substantial harm to any historic asset. EH commented that the setting of many buildings where there is an *'important designed relationship between major set pieces of town planning and the sea, and where the emptiness of the sea has significance in an experience of those areas'* would be affected. But it then concluded that the effect would be no greater than moderate, because the magnitude of the change in the historic asset settings was unlikely to result in a substantial effect upon the features that make them significant. EH confirmed its view was that the sea would remain the principal focus of any significant designed views and therefore concluded that the proposed Rampion project would not constitute substantial harm to or loss of the significance of any heritage asset (REP-243). Given the weight and importance attached to the desirability of preserving listed buildings as set out in EN-1 and the Infrastructure Planning Decisions regulation 2010, the Panel was reassured by the position taken by EH and BHCC in so far as listed buildings and conservation areas are concerned.

Marine Heritage

4.644 Section 13 of the ES provides an account of the approach to the assessment of marine assets within the study area. The study area includes the proposed wind farm site as well as the export cable corridor as well as a 2km buffer area. In addition, a Gazetteer of assets is also provided at Appendix 13.4 of the ES (APP-070).

4.645 The applicant states that the primary mitigation for marine heritage asset impacts would be via avoidance using archaeological exclusion zones (AEZ). Condition 11(h) and Condition 12 of the recommended Order secure a written scheme of investigation for approval by MMO in consultation and agreement with EH.

Conclusions

4.646 The Panel has had regard to the policy in NPS EN-1 that the particular heritage significance of assets that may be affected, including the effect on their settings, should be assessed. The Panel has also had regard to the Infrastructure Planning (Decisions) Regulation 2010 which state that:

'3. (1) When deciding an application which affects a listed building or its setting, the decision-maker must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.'

(2) When deciding an application relating to a conservation area, the decision-maker must have regard to the desirability of preserving or enhancing the character or appearance of that area.

(3) When deciding an application for development consent which affects or is likely to affect a scheduled monument or its setting, the decision-maker must have regard to the desirability of preserving the scheduled monument or its setting'.

4.647 Taking into account all the relevant information before us, and the desirability of preserving listed buildings, conservation areas and the Tottington Mount Scheduled Ancient Monument, we accept that the assessment set out in the applicant's ES is robust and appropriate and agree with the conclusions reached by EH. Accordingly, the Panel concludes firstly, that subject to the mitigation provisions agreed between the applicant and EH and now included in the recommended order, neither terrestrial heritage assets and their settings identified in the ES nor marine heritage assets would be substantially harmed by the proposed development and (based on information available to the Panel) there would be no loss of significance of any designated or undesignated heritage asset. Secondly, we conclude that the assessed effects upon heritage assets and upon their settings do not outweigh the need for new large scale energy infrastructure or preclude the making of the recommended Order.

5 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

Introduction

5.1 The findings and conclusions reached by the ExA Panel in this chapter on nature conservation issues in relation to the Habitats Regulations are intended to inform the Secretary of State (SoS) in performing his duties under the Habitats Regulations³⁰ as the competent authority for the purposes of the Habitats Directive³¹.

5.2 This chapter is set out as follows:

- Background and main issues
- Explanation of the process
- The project site and its relation to European sites³²
- Screening of sites for likely significant effects (LSE) (including the Panel's overall recommendations to assist the SoS on LSE)
- Issues for consideration in relation to appropriate assessment
- Findings in relation to effects on the integrity of the European site at Flamborough Head and Bempton Cliffs Special Protection Area (SPA)
- Matters arising during examination on alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures
- Concluding remarks and recommendations.

Background and main issues

5.3 The applicant submitted its Environmental Statement and a No Significant Effects Report (NSER) (APP-055) under Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) (APFP) Regulations 2009, which were deemed sufficient to accept for examination. Relevant and written representations, in particular from Natural England (NE) and the Royal Society for the Protection of Birds (the RSPB)/Sussex Ornithological Society, made it clear that there was disagreement

³⁰ The Conservation of Habitats and Species Regulations 2010 (as amended) (the 2010 Habitat Regulations)

³¹ Council Directive 92/43/EEC (The Habitats Directive)

³² European sites include Special Areas of Conservation (SACs), candidate SACs (cSACs) and Special Protection Areas (SPAs) which are protected under the Habitats Regulations. As a matter of policy, Government also applies the procedures of the Habitats Regulations to potential SPAs (pSPAs), Ramsar sites, and (in England) listed or proposed Ramsar sites and possible Special areas of Conservation, and sites identified, or required, as compensatory measures for adverse effects on any of the above sites. NE stated in its written representation (REP-297) *'It is also the Government's policy to consult Natural England in respect of sites listed for the purposes of the Convention on Wetlands of International Importance especially as Waterfowl Habitat signed at Ramsar on 2 February 1971 ('Ramsar sites'), as if they were European protected sites.'* NE cited the National Planning Policy Framework (March 2012) para 118 as evidence that listed or proposed Ramsar sites, potential SPAs and possible SACs should be given the same protection as European sites.

whether or not the Rampion OWF project was likely to give rise to adverse effects upon some European sites.

- 5.4 Through a process including written questions, two Biodiversity issue specific hearings (ISH) and Rule 17 requests, the Panel finds it possible to conclude that the project would not give rise to significant adverse effects upon any of the relevant European sites except the Flamborough Head and Bempton Cliffs SPA. (The section below covering the project site and its relation to European sites, lists the sites considered during examination). At the end of the examination differences of opinion remained regarding the likely effects of the Rampion OWF when assessed in combination with other plans and projects in relation to this particular SPA. The Panel's findings regarding those differences are reported below.
- 5.5 NE advised that appropriate assessment would be necessary in relation to the gannet and kittiwake that are features of the Flamborough Head and Bempton Cliffs SPA. This was because of lack of certainty over likely adverse effects upon the integrity of the SPA arising from the Rampion project, when assessed in combination with the predicted effects from other plans and projects. The applicant disagreed with NE as to the need for appropriate assessment and maintained that there would be no adverse effect. It suggested that the lack of certainty derived from matters other than those which are scientific.
- 5.6 There was agreement between the applicant and NE, and between the applicant and the RSPB/ Sussex Ornithological Society regarding the adequacy of the baseline evidence and assessment methodologies. NE stated (REP-233) that the baseline data are adequate and provide an accurate reflection of baseline conditions and that the assessment methodology is appropriate. The joint response from the RSPB/Sussex Ornithological Society (REP-241) also confirmed the adequacy of the marine ornithology section of the ES as a basis for assessment of the potential effects of the wind farm upon birds.
- 5.7 Having considered the relevant information and submissions available to us and the advice of the statutory nature conservation bodies, the Panel's recommendation is that an appropriate assessment is necessary and that the modelling results required to undertake one are available through evidence provided during the examination. We recommend that the SoS can conclude that the integrity of the conservation objectives for the Flamborough Head and Bempton Cliffs SPA with regards to the habitats for the gannet and kittiwake features would not be compromised when the in combination assessment is conducted in a manner that is proportionate to the timing, planning stage and legality of other relevant, proposed and planned projects. The basis for this recommendation is described in more detail below.

Explanation of the process

5.8 The Secretary of State is the competent authority for the purposes of the Habitats Directive³³ and the Habitats Regulations³⁴. Consent for the proposed development may only be granted if, having assessed the effects the project will have on the European sites or European offshore marine sites, the competent authority considers it passes the relevant tests in these Regulations. The Offshore Marine Regulations³⁵ (which apply the same tests as the Habitats Regulations), will also apply because although the majority of the site is within 12nm, there are some parts of it that are beyond the 12nm limit.

5.9 Planning Inspectorate Advice Note 10³⁶ (republished August 2013) summarises the four stage process to be followed to ensure sufficient information is available to support the competent authority in satisfying the regulations. The four stages are:

- Stage 1: screening;
- Stage 2: appropriate assessment;
- Stage 3: assessment of alternative solutions;
- Stage 4: IROPI (imperative reasons of overriding public interest).

The process is also set out by Natural England (NE) in its written representation as an eight step process (REP-297).

5.10 The screening stage is carried out to determine whether significant effects alone or in combination with other plans and projects are likely to occur. If likely significant effects (LSE) can be excluded on the basis of objective evidence and if the competent authority agrees this is the case, then no further action is required and the project can be consented. As described in more detail below, there is a difference of opinion between the applicant and NE as to whether LSE can be excluded in relation to this project.

5.11 If significant effects are likely or cannot be excluded, the competent authority must undertake an appropriate assessment (AA) of the implications of the project for the European site in view of the site's conservation objectives. As well as deciding whether or not appropriate assessment is necessary, the competent authority must also decide if the information provided by the applicant is sufficient to exclude an adverse effect upon the integrity of the European site. If this cannot be demonstrated, then the applicant's assessment needs to move to Stages 3 and 4 of the HRA process as listed above.

³³ Council Directive 92/43/EEC (The Habitats Directive)

³⁴ The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitat Regulations)

³⁵ The Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (as amended) (Offshore Marine Regulations)

³⁶ Planning Inspectorate Advice Note 10: Habitat Regulations Assessment relevant to Nationally Significant Infrastructure Projects

The Report on the Implications for European Sites (RIES)

- 5.12 The purpose of the RIES (PD-037) (and the consultation responses received in relation to it) is to compile, document and signpost information provided within the DCO application, and the information submitted throughout the examination by both the applicant and interested parties. The RIES for Rampion OWF was issued for consultation, including the statutory nature conservation bodies, for the purposes of Regulation 61(3) of the Habitats Regulations. This process may be relied on by the Secretary of State. Responses to the RIES are not incorporated into the RIES. They form additional information which was used in preparing this report and which the SoS can use to inform an appropriate assessment (if considered necessary).
- 5.13 The ExA issued the RIES (PD-037) under a Rule 8 letter (PD-024) on 13 December 2013, with a deadline for responses of 8 January 2014. As responses from the applicant (REP-620) and NE (REP-594) continued to illustrate differences the Panel issued a Rule 17 request for further information (PD-008), on 13 January 2014 with a deadline seeking responses by 18 January 2014. The Rule 17 request letter set out a number of questions arising from evidence provided at or immediately after the ISHs held in November and December 2013. Written responses to the request for comments regarding the RIES (PD-037) and the follow-up Rule 17 request were received.

Project site and its relation to European sites

- 5.14 Detailed project descriptions are provided by the applicant in its ES (APP-058 and APP-059) and in its No Significant Effects Report (NSER) (Revision C) (REP-474). A summary of the main features of the proposal are presented in chapter 2 of this report.
- 5.15 No party disagreed with the applicant's assessment that the proposed project is not connected with or necessary to the management for conservation of a European site. A number of European sites are included in the assessment despite being located some distance away from the application site. This is because birds from these European sites could forage within the application site and/or may pass through the application site on migration. Other European sites some distance away are assessed because of the potential for hydrological connections with the application site.
- 5.16 European sites considered within the applicant's initial No Significant Effects Report (NSER) Revision A (APP-055) are listed below, together with the distances to the project site as shown in the applicant's ES (APP-066) and its NSER Revision C (REP-474). The sites are also mapped on Figures 9.1 and 9.2 in the ES (APP-098). The sites are:

- Chichester and Langstone Harbour Special Protection Area (SPA) and Ramsar (35kms)
- Portsmouth Harbour SPA and Ramsar (53kms)
- Solent and Southampton Water SPA and Ramsar (49kms)
- Pagham Harbour SPA (28kms)
- Dungeness to Pett Levels SPA (54kms or 57kms)
- Baie de Seine Occidentale SPA (Iles de Saint Marcouf) (130kms)
- Alderney West Coast and Burhou Islands Ramsar Site (more than 180kms)
- Archipel des Sept-Iles SPA (more than 300kms)
- Flamborough Head and Bempton Cliffs SPA (490kms).

5.17 Over and above the European sites reviewed in the initial submission, further sites in the applicant's NSER Revision B (REP-259) included:

- Solent Maritime Special Area of Conservation (SAC) (38kms)
- South-Wight Maritime SAC (42kms)
- Solent and Isle of Wight Lagoons SAC (40kms)
- Bassurelle-Sandbank Site of Community Importance (SCI)³⁷ (60kms)
- Wight-Barfleur Reef candidate SAC (cSAC)³⁸ (56kms)
- Dungeness SAC (57kms)
- Hastings Cliff SAC (46kms)
- Lyme Bay and Torbay SCI³⁹ (162kms direct / 168kms round the coast)
- Margate and Long Sands SCI⁴⁰ (115kms direct / 147kms round the coast).

5.18 In addition, the following two sites were identified in the screening matrices provided by the applicant in its response (REP-425) to the ExA's Rule 17 request (PD-007) which sought to clarify the scope of the outstanding work on the HRA and associated matrices:

- Forth Islands SPA (609kms)
- Alde-Ore Estuary SPA and Ramsar (184kms).

5.19 All of the twenty sites listed above were included in the applicant's final version of the HRA matrices (version 5) (REP-476).

5.20 Natural England's relevant representation (REP-152) highlighted six further European sites as affording the potential to be affected:

- East Devon Heaths SPA⁴¹
- Dorset Heathlands SPA and Ramsar

³⁷ Referred to by general term 'SAC' in applicant's matrices

³⁸ Referred to by general term 'SAC' in applicant's matrices

³⁹ Referred to by general term 'SAC' in applicant's matrices

⁴⁰ Referred to by general term 'SAC' in applicant's matrices

⁴¹ Distances were not provided for these sites

- New Forest SPA
- Wealden Heaths (I & II) SPA
- Ashdown Forest SPA
- Thames Basin Heaths SPA

5.21 One further European site is identified in the applicant's Environmental Statement (ES) (APP-066):

- Pevensey Levels SAC.

Screening of sites for likely significant effects

5.22 The applicant set out the potential effects that could be generated by the project in its three revisions of its NSER: Revision A (APP-055), Revision B (REP-259) and Revision C (REP-474). The effects were also set out in Section 2, paragraph 2.11 of the RIES (PD-037).

5.23 The effects considered by the applicant in its HRA assessment include:

- disturbance and displacement of marine birds during construction, operation and decommissioning of offshore and landfall elements
- disturbance and displacement of shorebirds during decommissioning of the grid connection and landfall;
- disturbance on prey species (fish)
- bird mortality through collision with WTGs during operation
- barrier effect of the wind farm on bird flight lines during operation
- increased suspended sediment concentrations
- increased seabed thickness
- changes to hydrodynamic regime.

5.24 The results of the screening of European sites undertaken by the applicant are listed on Table 5.1 below.

Table 5.1 Screening of European sites by applicant

European site	LSE screened in or out
Chichester and Langstone Harbour SPA and Ramsar	Screened out
Portsmouth Harbour SPA and Ramsar	Screened out
Solent and Southampton Water SPA and Ramsar	Screened out
Pagham Harbour SPA	Screened out
Dungeness to Pett Levels SPA	Screened out
Flamborough Head and Bempton Cliffs SPA	Features screened in for in combination effects: gannet and kittiwake
Baie de Seine Occidentale SPA	Screened out (refer to transboundary)

Alderney West Coast and the Burhou Islands Ramsar	Screened out (refer to transboundary)
Archipel des Sept-Iles	Screened out
Solent Maritime Special Area of Conservation	Screened out
South-Wight Maritime SAC	Screened out
Solent and Isle of Wight Lagoons SAC	Screened out
Bassurelle-Sandbank SCI	Screened out
Wight-Barfleur Reef cSAC	Screened out
Dungeness SAC	Screened out
Hastings Cliff SAC	Screened out
Lyme Bay and Torbay SCI	Screened out
Margate and Long Sands SCI	Screened out
Forth Islands SPA	Screened out
Alde-Ore Estuary SPA and Ramsar	Screened out
East Devon Heaths SPA	Screened out
Dorset Heathlands SPA and Ramsar	Screened out
New Forest SPA	Screened out
Wealden Heaths (I & II) SPA	Screened out
Ashdown Forest SPA	Screened out
Thames Basin Heaths SPA	Screened out
Pevensey Levels SAC	Screened out

Effects resulting from the project alone

5.25 The applicant's screening matrices (version 5) (REP-476) and its NSER Revision C (REP-474) concluded that the proposed development is not likely to give rise to significant effects on any European sites. There were a number of matters on which NE required further information and modelling from the applicant before it could conclude no LSE for the project alone. These are set out in the SoCG with the applicant (REP-233). For completeness these are also outlined below under the appropriate European sites. At the Biodiversity ISH on 4 December 2013, NE confirmed its agreement that a likely significant effect could be excluded in relation to the proposed offshore wind farm **alone** (HR-072 to HR-076) on all sites.

5.26 The Panel considers that there is sufficient evidence for the SoS to conclude that significant effects arising from the proposed wind farm considered **alone** can be excluded in relation to all European sites. The applicant has demonstrated this in the case of all sites to NE's satisfaction. Having regard to all the relevant information before us, the Panel has no reason to disagree with this shared finding.

East Devon Heaths SPA, Dorset Heathlands SPA and Ramsar, New Forest SPA, Wealden Heaths (I & II) SPA, Ashdown Forest SPA and Thames Basin Heaths SPA.

5.27 At an early stage in the proceedings, NE raised a concern regarding the potential for adverse effects upon the above six

additional European sites (REP-152). The concern raised was in connection with collision risk to migrating nightjar. The RSPB/Sussex Ornithological Society stated in their relevant representation that they had raised the matter of nocturnal migrants during pre-application consultation (REP-181). Following discussions between the parties, agreement was reached in the SoCGs concluded between the applicant and NE (REP-233) and between the applicant and the RSPB/Sussex Ornithological Society (REP-241) which confirmed agreement of no significant effect upon the European sites identified by NE. This was also confirmed at the Biodiversity ISH on 4 December 2013 (HR-72 to HR-76). As the absence of any significant effect was confirmed before preparation of the RIES (PD-037), these relevant European sites are not reported in the RIES matrices.

- 5.28 The Panel finds no reason to disagree with the shared view of the applicant, NE and the RSPB/Sussex Ornithological Society that there is no likely significant adverse effect **alone** for the nightjar feature associated with the following sites: East Devon Heaths SPA, Dorset Heathlands SPA and Ramsar, New Forest SPA, Wealden Heaths (I & II) SPA, Ashdown Forest SPA and Thames Basin Heaths SPA. The Panel considers that there is sufficient evidence for the SoS to conclude that significant effects can be excluded in relation to the features for the above European sites.

Pevensey Levels SAC

- 5.29 Pevensey Levels SAC was identified in the applicant's ES, Section 9 (APP-066) as falling within the study area. This European site was not considered further because the applicant's explanation that the designated feature, the freshwater ramshorn snail, is of limited relevance to the intertidal/marine environment of western Sussex was accepted by all relevant parties and appeared reasonable. The site was also eliminated due to its distance from the proposed Rampion development. The applicant did not prepare a screening matrix for this site. No concerns were raised by NE or by any other party regarding this exclusion.
- 5.30 Having assessed the submissions from the parties and the relevant information before us regarding this point, the Panel considers that there is sufficient evidence for the SoS to conclude that likely significant adverse effects upon the Pevensey Levels SAC are not likely to arise.

Solent Maritime SAC, South-Wight Maritime SAC, Solent and Isle of Wight Lagoon SAC, Bassurelle Sandbank SCI, Wight-Barfleur Reef cSAC, Dungeness SAC, Hastings Cliff SAC, Lyme Bay and Torbay SCI and Margate and Long Sands SCI.

- 5.31 The above sites were identified in the applicant's NSER Rev B. In relation to all these European sites, the features comprised terrestrial, intertidal and tidal habitats such as coastal lagoons,

mudflats, reefs, sandbanks, vegetated sea cliffs and some associated vegetation and one mollusc species. No birds qualified as site features for the above sites. The likely effects that were assessed in the applicant's ES Section 6 Physical Environment (APP-063) and Section 7 Benthos and Sediment Quality (APP-064) are suspended sediment, seabed thickness and hydrodynamics. Impacts predicted were assessed to be minor, temporary and localised in the applicant's HRA matrices version 5 (REP-476). The applicant's NSER Revision B (REP-259) showed that all the sites are outside the wider hydrodynamic impact zone. Hence impacts on habitats were assessed as negligible. No significant effects on wave and tidal currents were predicted. SAC Stage 1 Matrices A to I set out the evidence in the RIES (PD-037).

5.32 NE (REP-326) advised in its response to the Panel's questions that it had no specific concerns in relation to the onshore elements of the project in connection with these European sites and that likely changes to substrate, water quality or coastal processes were judged to be negligible. At the biodiversity ISH on 4 December 2013 (HR-072 to HR-076), NE confirmed that it agreed with the applicant's conclusion that there would be no LSE. This was confirmed in its submission of oral representation (REP-581).

5.33 The impacts upon these European sites were assessed as negligible. It was suggested by the applicant that they would not contribute to in combination effects upon designated features in its NSER Revision B (REP-259). The Panel notes that there have been no representations to the contrary from any other IP. On the basis of the information and responses referred to above, the Panel considers there is sufficient evidence for the SoS to conclude that significant effects can be excluded **alone** (or **in combination**) on the Solent Maritime SAC, South-Wight Maritime SAC, Solent and Isle of Wight Lagoon SAC, Bassurelle Sandbank SCI, Wight-Barfleur Reef cSAC, Dungeness SAC, Hastings Cliff SAC, Lyme Bay and Torbay SCI and Margate and Long Sands SCI.

Chichester and Langstone Harbour SPA and Southampton Water SPA

5.34 NE commented in its relevant representation (REP-152) and in the Annex C Ornithology Report to its written representation (REP-297) that before LSE alone could be excluded, further work was required regarding the potential indirect effects upon prey species resulting from construction stage activities for the breeding sandwich tern (*Sterna sandvicensis*) features at Chichester and Langstone Harbour SPA and Ramsar and Solent and Southampton Water SPA because piling operations could impact upon fish abundance and distribution thus affecting sandwich tern foraging.

5.35 NE confirmed in its response (REP-507) to the Panel's written questions that, on the basis of the information provided by the applicant, it did not consider piling restrictions necessary in order

to conclude no LSE for this species at these sites, although it did not agree that all the applicant's reasoning was fully justified. NE also confirmed at the Biodiversity ISH on 4 December 2013 (HR-072 to HR-076) its view that no LSE would arise in relation to the breeding sandwich tern at these SPA sites as a result of the Rampion project. The RSPB/Sussex Ornithological Society also confirmed their agreement to an assessment concluding no LSE through collision risk to the breeding colonies of sandwich tern features at the Solent and Southampton SPA and the Chichester and Langstone Harbour SPA (REP-554).

- 5.36 The Panel notes that there have been no representations to the contrary from any other IP. On the basis of the information and responses referred to above, the Panel considers there is sufficient evidence for the SoS to conclude that significant effects can be excluded **alone** for the Chichester and Langstone Harbour SPA and Southampton Water SPA.

Dungeness to Pett Levels SPA

- 5.37 The applicant reported that both NE and the RSPB/Sussex Ornithological Society raised concerns regarding the possible adverse effects of the proposed Rampion project on the fish stocks that are the diet of common tern (*Sterna hirundo*) that is a feature of the Dungeness to Pett Levels SPA (REP-474). The applicant stated that there is only a small overlap between the common tern foraging range and the zone in which there may be significant avoidance of the project construction site by fish. Effects on the SPA common tern population would therefore be negligible. It was also argued that any additional indirect effects upon herring spawning outside this foraging range and upon recruitment to the wider herring population would be mitigated by restrictions to piling activity during peak spawning season secured in Schedule 13, condition 16 (1-3) of the DML for the Array. No other IP disagreed with this assertion.
- 5.38 On the basis of the information and responses referred to above, the Panel considers there is sufficient evidence for the SoS to conclude that significant effects can be excluded **alone** for the Dungeness to Pett Levels SPA.

Effects resulting from the project in combination

- 5.39 The applicant has also considered the effects of the Rampion OWF project in combination with other projects or plans. These in combination effects have been commented upon by NE and by the RSPB/Sussex Ornithological Society. It is the in combination assessment where there is neither agreement between the applicant and NE, nor between the applicant and the RSPB/Sussex Ornithological Society.

5.40 In relation to the in combination assessment the applicant's position is that the project makes such a small contribution to the total combined effects that LSE can be excluded (REP-576) for all identified European sites. The applicant's position was maintained throughout the examination. NE took a different position in relation to Northern gannet (gannet) (*Morus bassanus*) and kittiwake (*Rissa tridactyla*) associated with the Flamborough Head and Bempton Cliffs SPA and in relation to lesser black-backed gull (*Larus fuscus*) associated with the Alde-Ore Estuary SPA (REP-297). Other species and sites are dealt with in this report under transboundary matters in chapter 3, Legal and Policy Context. The different positions adopted by the respective parties, together with the relevant Panel findings and conclusions are set out below under European site headings, which are grouped for reporting purposes.

5.41 The applicant's position is set out in the relevant chapters of its ES, in the NSER Revisions A, B and C and in the habitats matrices (the applicant's final version of which is version 5) (REP-474). A summary of the initial assessment of evidence relating to effects upon the features for each site was reported in the RIES matrices (PD-037). Where a site is designated both as a SPA and as a Ramsar site, the information is combined in one matrix and reported together. The Panel notes below the starting positions of relevant parties and the movement observed during the examination proceedings. We have grouped sites where the same features and effects prevail.

Chichester and Langstone Harbour SPA and Ramsar, Portsmouth Harbour SPA and Ramsar, Solent and Southampton Water SPA and Ramsar, Pagham Harbour SPA and Dungeness to Pett Levels SPA

5.42 The identified features of these European sites are all ornithological, either as particular species or as assemblages. The likely effects assessed by the applicant on a species by species basis are disturbance, collision risk, barrier effect and in combination effects. These are presented in the application ES Section 11 Marine Ornithology (APP-068). SPA Stage 1 Matrices A to E in the RIES (PD-037) provided a summary report up to that point in relation to the evidence regarding these particular European sites.

5.43 A number of matters raised during examination are common to these European sites as explained below. All matters raised by relevant IPs were resolved through the submission of additional information or by securing appropriate mitigation. As a result, the relevant parties agreed that likely significant effects arising from any project when assessed **alone and in combination** with other plans and projects may be excluded when considering these site features.

Additional CRM data

- 5.44 In relation to all the above-mentioned sites, NE stated in its relevant representation (REP-152) and in the Annex C Ornithology Report to its written representation (REP-297) that it was not satisfied that the assessment of likely significant effects upon non-seabird migrants was adequate to reach a conclusion of no LSE on any of the wintering waterbird populations associated with the SPAs. Accordingly NE requested results from collision risk modelling (CRM) for these species.
- 5.45 The applicant provided these results in its 'Further information relating to outstanding HRA work and matrices' (REP-425) as response to the Rule 17 request. The applicant also provided further CRM predictions for key species, namely: bar-tailed godwit (*Limosa lapponica*), common tern (*Sterna hirundu*), common redshank (*Tringa totanus*), dunlin (*Calidris alpina alpina*), dark-bellied Brent goose, (*Branta bernicla bernicla*), grey plover (*Pluvialis squatarola*), and ringed plover (*Charadrius hiaticula*) for the five European sites. The work considered predicted mortality against the North Sea biologically defined minimum populations (BDMP) (REP-475), concluding that increases over baseline mortality would not be significant for any of these species (REP-474).
- 5.46 NE confirmed at the Biodiversity ISH on 4 December 2013 (HR-072 to HR-076) and in its summary of oral representation (REP-581) that it was satisfied with the modelling provided by the applicant and that LSE may be excluded in connection with all waterbird features for these European sites. At the biodiversity hearing, NE also confirmed that its concerns had been in connection with individual species and not the waterfowl assemblages that are features of some of the European sites.

Cumulative construction impacts

- 5.47 The applicant's ES Section 11 Marine Ornithology (APP-068) identified that indirect cumulative construction impacts on prey (fish) species would only occur if piling at Rampion and the proposed Navitus Bay OWF were carried out simultaneously. This risk was reported in the RIES (PD-037) as potentially affecting a number of bird species. The applicant indicated at the Biodiversity ISH (HR-072 to HR-076) that the likelihood of piling activity overlap was low and proposed to monitor overlap of piling activities through submission of activity logs as required by the Marine Mammal Mitigation Protocol (MMMP).
- 5.48 The coordination of piling activities with the Navitus Bay developer was proposed by the applicant in order to mitigate this risk. The applicant submitted a signed agreement concluded between E.ON and the Navitus Bay applicant (REP-383). This document set out principles for a joint approach and included agreement to share

information. It also agreed that MMMPs for both OWF developments would include information and specific measures in the event overlapping construction phases occurred or that any other cumulative impacts were identified. The production of an MMMP for this project is secured in the DCO by Schedule 13 Condition 11(f) of the DML for the Array which requires an MMMP to be prepared and agreed with MMO, in consultation with NE and JNCC where driven or part driven foundations are to be used.

- 5.49 NE advised in its written representation (REP-297) that it no longer had concerns regarding impacts on these five European sites. Agreement was confirmed between applicant and NE in the 'SoCG Not Agreed Update' (REP-575) that likely significant effect can be excluded for all the qualifying features associated with these European sites.
- 5.50 On the basis of the information above, the Panel considers there is sufficient evidence for the SoS to conclude significant adverse effects can be excluded when likely significant effects from the Rampion project are considered **alone and in combination** with other plans and projects from the Chichester and Langstone Harbour SPA and Ramsar, the Portsmouth Harbour SPA and Ramsar, the Solent and Southampton Water SPA and Ramsar, Pagham Harbour SPA and the Dungeness to Pett Levels SPA.

Baie de Seine Occidentale SPA (Iles de Saint Marcouf), Archipel des Sept-Iles SPA and Alderney West Coast and the Burhou Islands Ramsar Site

- 5.51 The reporting for these sites has been covered in paragraphs 3.67 and 3.72 in chapter 3 Legal and Policy Context.

Forth Islands SPA

- 5.52 Initial concerns raised by NE in its written representation (REP-297) were considered by the applicant. Further collision risk modelling (CRM) for key species as an increase over existing baseline mortality for biologically defined minimum populations (BDMP) was then undertaken. Results were provided in the applicant's ornithology work in order to address points raised in NE's written representation (REP-475) and in the applicant's NSER Revision C (REP-474). Whilst emphasising that Scottish sites are not within NE's remit (REP-409), NE did indicate that it was likely that gannet and kittiwake from the Forth Islands SPA would pass through or winter in the Rampion OWF area.
- 5.53 The Panel wrote to Scottish Natural Heritage (SNH) (PD-022) inviting it to participate in the examination. The reply (PD-026) indicated that SNH did not wish to participate.
- 5.54 The applicant provided further CRM results that considered predicted bird mortality against the North Sea BDMP and apportioned mortality to the site (REP-474 and REP-475). The

RSPB/Sussex Ornithological Society accepted the applicant's case that the increase over baseline mortality for both gannet and kittiwake is not significant (REP-510). The 'SoCG Not Agreed Update' between the applicant and NE (REP-575) confirmed there was no concern over likely significant effect for gannet in relation to this site. It did not confirm agreement of no LSE for kittiwake; however kittiwake forms part of the assemblage feature, rather than it being an individual feature. It is not identified by NE as a species for which there is continuing concern. NE also confirmed that the Forth Islands SPA is outside its remit as it lies within the administrative responsibility of SNH.

- 5.55 Having regard to the points set out above, the Panel considers that there is sufficient evidence for the SoS to conclude that significant adverse effects in relation to the Forth Islands SPA arising from the Rampion OWF, when considered **alone and in combination** with other projects and plans may be excluded.

Flamborough Head and Bempton Cliffs SPA

- 5.56 This is the one European site located in England in relation to which differences remained outstanding between the applicant and NE (REP-575 and REP-581) and the RSPB/Sussex Ornithology Society (REP-510). All relevant IPs agreed that there is no likely significant effect from the Rampion project when considered **alone**. However, NE stated that it considered appropriate assessment is likely to be required because adverse in combination effects cannot be ruled out in relation to the SPA's qualifying features; gannet and kittiwake (REP-581). It stated at the Biodiversity ISH (HR-072 to HR-076) that the only outstanding issues regarding this SPA site are in respect of **in combination** effects relating to collision risk for gannet and kittiwake.
- 5.57 The applicant maintained throughout the proceedings that there is no likely significant effect either when the Rampion project is considered **alone** or when it is considered **in combination** with other plans and projects. This position is set out in the applicant's NSER Revision C (REP-474).
- 5.58 The ES Section 11, 'Marine Ornithology' (APP-068) accompanying the application did not identify potential impacts upon the Flamborough Head and Bempton Cliffs SPA because the distance from the project site to the SPA was greater than mean foraging ranges of the bird species features. Following comments from NE in its written representation (REP-152) this site was included in the applicant's NSER Revision B (REP-259), but the matrix then screened out LSE. It is noted however, that there was disagreement in the SoCG between the applicant and NE (REP-233) regarding the adequacy of the screening for gannet and kittiwake at Flamborough Head and Bempton Cliffs SPA. At this stage the applicant was, at the request of NE, undertaking further work in order to apportion collision risk to SPA populations of

gannet and kittiwake, as reported in the applicant's NSER Revision C and updated HRA matrices version 5 (REP-474 and REP-475).

- 5.59 There was further discussion at the Biodiversity ISH held on 4 December 2013 (HR-072 to HR-076), when it was agreed the applicant would submit further collision risk results. The applicant provided additional data in its clarification on ornithology dated 10 December 2013 (REP-576) which set out its approach to the allocation of other plans and projects to tiers, collision predictions and thresholds for impact⁴². An update to the SoCG between applicant and NE (REP-575) dated 10 December 2013 made it clear that agreement had not been reached regarding this matter. It was agreed between the parties that the proportional incidence of collision risk to birds would be low. However, NE did not consider this incidence to be de minimus in reference to gannet and kittiwake for HRA. It was stated '*In the absence of strategic guidance it is likely to remain a difference in professional opinion and a matter not agreed.*'
- 5.60 This was the position reported in the RIES (PD-037). The applicant's view remained unchanged and in its response to the RIES (REP-620) stated: '*It is the Applicant's view that adequate information has now been provided to exclude adverse effect and that it is possible to conclude that no reasonable scientific doubt remains as to the absence of an adverse effect as a result of predicted levels of in-combination mortality.*' The applicant continued '*the only apparent uncertainties on the part of SNCBs are not scientifically based, but are those uncertainties which:*
- (i) *Arise from whether a building block or strategic approach should be adopted, in the absence of any clear policy guidance*
 - (ii) *Arise from inherent uncertainties in any in-combination assessment (in the absence of any clear policy guidance as to what other projects, in a tiered approach should be included; in what order those projects should be included; and with what levels of data certainty)*
 - (iii) *Arise from whether; (in the absence of and clear policy view other than what can be deduced from previous decisions) a 98% or 99% avoidance rate for gannet should be adopted.'*
- 5.61 In NE's response to the RIES (REP-594), whilst discussing likely effects upon gannet, it referred to its expert advice submitted to the East Anglia One (EA One) OWF examination, in which it had '*highlighted that were all wind farms taken into account in the in-combination assessment, scientific doubt remained as to the absence of adverse effect on the integrity of the FHBC SPA in that case*'. NE continued that in the case of Rampion OWF, '*Whether an*

⁴² These matters are described in more detail in the section below on the Findings in relation to effects on the integrity of the European site at Flamborough Head and Bempton Cliffs SPA.

AA could conclude that an adverse effect on integrity could be ruled out in this case would therefore depend upon ordering of the windfarms and the avoidance rate adopted' NE also advised that adverse impact on integrity could not be ruled out in the case of kittiwake. These uncertainties are discussed in greater detail below under 'Findings in relation to effects on the integrity of the European site at Flamborough Head and Bempton Cliffs SPA'.

Alde-Ore Estuary SPA and Ramsar

- 5.62 Points agreed and discussed above in relation to the Chichester and Langstone Harbour SPA and Ramsar, the Portsmouth Harbour SPA and Ramsar, the Solent and Southampton Water SPA and Ramsar, the Pagham Harbour SPA and the Dungeness to Pett Levels SPA also apply to the Alde-Ore Estuary SPA and Ramsar site.
- 5.63 Further modelling was undertaken by the applicant in relation to lesser-black-backed gull (*Larus fuscus*) (REP-474). In the light of the results of that modelling NE confirmed at the Biodiversity ISH (HR-072 to HR-076) and in its summary of oral representations (REP-581) that it did not consider appropriate assessment necessary for this species in relation to the Alde-Ore Estuary SPA and Ramsar site.
- 5.64 The Panel considers that there is sufficient evidence for the SoS to conclude that significant effects arising from the proposed Rampion project when assessed **alone and in combination** with other plans and projects may be excluded in relation to the Alde-Ore Estuary SPA and Ramsar. This is based on the results of the modelling information referred to above and the comments from both the applicant and NE.

Panel's overall conclusions and recommendation regarding assessment of likely significant effects

- 5.65 The Panel's overall conclusion relating to the assessment of effects regarding all the above mentioned European sites is that significant adverse effects may be excluded for all sites when the Rampion Project is considered **alone**. When the likely effects of the proposed Rampion project **in combination** with other plans and projects, the Panel accepts and gives weight to NE's advice that there remains scientific uncertainty surrounding the likelihood of significant adverse effects upon the gannet and kittiwake features of the Flamborough Head and Bempton Cliffs SPA. Accordingly, having regard to all relevant information and evidence presented to the examination, the Panel concludes that the SoS cannot rule out an adverse effect on integrity of the Flamborough Head and Bempton Cliffs SPA.

Issues for consideration in relation to appropriate assessment

- 5.66 Having considered the likely significant effects and the advice of the statutory nature conservation bodies, we recommend that the SoS should undertake an appropriate assessment for the gannet and kittiwake features of the Flamborough Head and Bempton Cliffs SPA. The reasons for this conclusion are detailed at the end of this chapter from paragraph 5.68 onwards.

Sufficiency of information to carry out an appropriate assessment

- 5.67 Having regard to the relevant information contained in the application and its supporting documentation, together with the relevant information submitted during the course of the examination and referred to in this report, the Panel's judgement is that there is sufficient information to enable the SoS in his role as competent authority, to conduct, if necessary, an appropriate assessment of the project in terms of the effects upon integrity of the gannet and kittiwake features of the Flamborough Head and Bempton Cliffs SPA; (as described in Section 4.3 of NPS EN-1).

Findings in relation to effects on the integrity of the European site at Flamborough Head and Bempton Cliffs SPA

- 5.68 Evidence was presented during examination regarding the effects on the integrity on the Flamborough Head and Bempton Cliffs SPA. The matrices in Section 4 of the RIES (PD-037) report the evidence to that date. Final positions were stated in the following responses to the RIES and to final Rule 17 (PD-008) request from:
- Applicant (REP-620, REP-632, REP-638 to REP-641)
 - NE (REP-594 and REP-630)
 - The RSPB/Sussex Ornithological Society (REP-646).

Conservation objectives

- 5.69 The conservation objectives for the Flamborough Head and Bempton Cliffs SPA were put before the examination by the applicant in its HRA Matrices version 3 (REP-374) and by NE in Annex B of its written representation (REP-297) and are summarised in the RIES (PD-037) in SPA Stage 2 Matrix B. They are:

'Avoid the deterioration of the habitats of the qualifying features, and the significant disturbance of the qualifying features, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving the aims of the Birds Directive.

Subject to natural change, to maintain or restore:

- *The extent and distribution of habitats of the qualifying features;*
- *The structure and function of the habitats of qualifying features;*
- *The supporting processes on which the habitats of the qualifying features rely;*
- *The distribution of the qualifying features within the site.'*

5.70 The qualifying features to which the conservation objectives refer are:

- Black-legged kittiwake (*Rissa tridactyla*) (breeding) (kittiwake)
- Northern gannet (*Morus bassanus*) (gannet)
- Seabird assemblage.

5.71 The applicant noted in its HRA Matrices version 3 (REP-374), concurring with NE, that gannet is not formally listed as a qualifying feature in its own right on the SPA citation but is currently present in sufficient numbers to be classed as such. Therefore it has been treated as a full qualifying SPA species in the applicant's assessment. As expert advisors to all parties are in full agreement, the Panel sees no reason to question this point. The Panel has not considered any effects on integrity in relation to the seabird assemblage further, because NE indicated that this was not a concern at the Biodiversity ISH on 4 December 2013. This expert pinion was also subsequently reported in NE's summary of oral proceedings (REP-581).

Mitigation

5.72 There is a clear and shared view between the applicant and NE that there is no potential for mitigation of any adverse effects of the Rampion project when considered in combination with other projects and plans upon the gannet and kittiwake features of the Flamborough Head to Bempton Cliffs SPA. This shared conclusion is set out by both the applicant and NE in their respective final responses to the Panel's final Rule 17 request (PD-008).

5.73 The applicant (REP-632) argued that no mitigation such as swept area reduction or reduction in the number of turbines is considered appropriate because the extent of any such reduction that would be required to achieve minimal reduction in bird mortality would be wholly disproportionate.

5.74 NE (REP-630) stated that no mitigation at the colony could be delivered to increase survival or productivity in order to offset collision mortality of gannet or kittiwake: *'There is in NE's view no form of mitigation that could be delivered at the Flamborough colony itself to either increase survival or productivity to offset additional collision mortality of either species. Gannets already reproduce at this colony at a very favourable rate and the colony*

is effectively inaccessible such that human intervention is impractical.'

- 5.75 NE concluded in relation to gannet; *'The additional collision mortality of Flamborough gannets predicted to occur at Rampion (18 birds of all ages (14 adults) at AR 98%) does not materially alter the in combination mortality total up to and including Rampion Offshore Windfarm and does not result in any PBR threshold being exceeded which would otherwise not be.'* In relation to kittiwake, NE stated; *'The additional collision mortality of Flamborough kittiwakes predicted to occur at Rampion (27 birds of all ages (22 adults) at AR 98%) does not materially alter the in combination mortality total up to and including Rampion Offshore Windfarm and does not result in any PBR threshold being exceeded which would otherwise not be.'* NE continued in conclusion for both species; *'The corollary of that is that no level of mitigation at Rampion can reasonably be expected to reduce overall in combination mortality to a point at which an adverse effect on integrity can be ruled out.'* (REP-630).
- 5.76 As mitigation needs to be considered as part of the HRA process, the Panel considers it important to set out the position regarding mitigation here. We have no reason to disagree with the shared view of the parties that no mitigation of the predicted in combination effects of the proposed Rampion project in association with other plans and projects is practicable. The SoS should therefore be aware if conducting an appropriate assessment that there is no mitigation that can be applied to resolve any uncertainty relating to any in combination adverse effect.

Effect on integrity

- 5.77 The Panel notes that the conservation objectives for the Flamborough Head to Bempton Cliffs SPA focus principally upon maintenance of the habitat for the qualifying features. However, advice provided by NE during the examination suggested that maintenance of the populations of qualifying features is important to maintaining the integrity of the site. In order to establish whether there is any effect on integrity, viability of the population of the qualifying feature populations of gannet and kittiwake associated with the SPA must be assessed. PBR modelling, a methodology which seeks to determine the levels of incidental take that will not lead to population decline is an approach recommended by NE. The methodology was explained and adopted by the applicant in its additional clarification regarding ornithology (REP-576). There was agreement between parties about the upper and lower population thresholds derived through this process. These are set out later in Table 5.2 below.

Differences between parties and the Panel's consideration and approach to collision mortality and the assessment of adverse effects on integrity of the conservation objectives

5.78 The outstanding areas where differences existed between relevant parties were:

- The order in which projects should be allocated to tiers
- The choice between the 'building block' approach and inclusion of all plans and projects within tiers to be considered in the in combination assessment
- Selection of appropriate avoidance rates for gannet and kittiwake
- Mortality figures.

These are considered in turn below in more detail.

5.79 To enable understanding of the implications in terms of estimated bird fatalities associated with the different scenarios suggested by the applicant and NE, the Panel provides Table 5.2 below. This gives a summary of predicted mortalities for gannet and kittiwake shown in the context of the agreed PBR thresholds. Table 5.2 illustrates possible cumulative mortality forecasts based upon different avoidance rate assumptions and project ordering (scenarios) drawing on information and arguments put forward by the relevant parties in their respective submissions. The sources for this table are:

- applicant's Appendix 15 ornithology clarification, Tables 6, 7 and 10 (REP-576)
- NE Annex A Gannet in combination assessment (REP-513)
- NE Annex B Kittiwake in combination assessment (REP-514)
- NE Explanation of Tables (REP-582)
- NE Response to RIES (REP-594)
- NE Rule 17 of 18 January 2014 response (REP-630).

5.80 It should be noted that NE's Annexes A and B (REP-513 and REP-514) need to be read in conjunction with the notes provided NE's reasoning to support its version of the tables (REP-582) because the mortality figures associated with any particular wind farm cannot be read direct from the tables. This is because multipliers are required to generate predicted deaths of adult birds. For gannet the multiplier is 0.75 and for kittiwake it is 0.8144.

Table 5.2⁴³: Predicted gannet and kittiwake adult mortality at Flamborough Head and Bempton Cliffs (FHBC) SPA

Scenario Description	AR	Upper / lower threshold range	Predicted cumulative mortality	Head-room below / above lower threshold	Head-room below / above upper threshold	Rampion adult mortality
Gannet		286 - 361				
NE Tiers 1-5	98%		798	-512	-437	14
NE Tiers 1-5	99%		399	-113	-38	7
NE Tiers 1-4	98%		678	-392	-317	14
NE Tiers 1-4	99%		339	-53	22	7
NE Tiers up to Rampion	98%		488	-202	-127	14
NE Tiers up to Rampion	99%		244	42	117	7
Applicant's ordering + building block	98%		287	-1	74	14
Applicant's ordering + building block	99%		144	142	217	7

⁴³ Reading from left to right Table 5.2 comprises:
a description of the scenario
the assumed avoidance rate (AR)
the agreed upper and lower PBR thresholds
the predicted cumulative adult bird mortality
the 'headroom' above or below the lower threshold (ie lower threshold less adult mortality figure)
the 'headroom' above or below the upper threshold (ie upper threshold less adult mortality figure)
the forecast number of adult mortalities arising from Rampion OWF.

NE up to Rampion + Dogger Bank CB + Hornsea 1	98%		636	-350	-275	14
NE up to Rampion + Dogger Bank CB + Hornsea 1	99%		318	-32	43	7
Kittiwake		250 - 350				
NE Tiers 1-5	98%		759	-509	-409	22
NE Tiers 1-4	98%		613	-363	-263	22
NE Tiers up to Rampion	98%		345	-95	5	22
Applicant's ordering + building block	98%		217	33	133	22
NE up to Rampion + Dogger Bank CB + Hornsea 1	98%		613	-363	-263	22
<p>KEY Negative figure means PBR exceeded.</p>						

Discussion of figures presented in Table 5.2

- 5.81 Table 5.2 demonstrates points made by the applicant and acknowledged by others regarding the low predicted mortality resulting from the Rampion OWF assessed alone, when compared with the relevant PBR thresholds for the species regarding which concerns have been raised. This can be seen by comparing the figures in the final column with those in the third column. For gannet the adult mortality from Rampion is forecast to be 7 or 14 (depending on avoidance rate), compared with PBR threshold limits of between 286 and 361. For kittiwake, the adult mortality from Rampion is forecast to be 22, compared with PBR threshold limits of between 250 and 350.
- 5.82 Table 5.2 also sets out, what for the purposes of this report the Panel refers to as 'headroom'. This is the additional mortality margin forecast as possible without affecting integrity. This 'headroom' mortality margin is derived from subtracting the predicted in combination mortality from the upper and lower PBR thresholds. Where PBR thresholds are exceeded, the figure is negative and the cell is shaded grey.
- 5.83 It can be seen from Table 5.2 that varying the parameters produces different results as to whether the upper and lower PBR thresholds are exceeded; and what 'headroom' remains if the thresholds are not exceeded. In relation to gannet, the choice between the 98% or 99% avoidance rates and the decision regarding which wind farms other than Rampion are included in the in combination assessment are the two key variables. For kittiwake it is the ordering and inclusion of other wind farms that affects whether the relevant PBR thresholds are exceeded.
- 5.84 Table 5.2 also illustrates the point made by NE in its response to our Rule 17 request (REP-630) that no threshold is exceeded that would otherwise not be exceeded by the addition of the predicted adult bird fatalities associated with the proposed Rampion project. This point is also illustrated in Table 1 of the applicant's submission (REP-641).
- 5.85 Allied to this finding, the Panel also draws attention to the position regarding mitigation agreed between applicant and NE. The crux of the matter is that the additional mortality predicted for Rampion OWF does not materially alter the in combination mortality up to and including Rampion and does not result in any PBR threshold being exceeded that would otherwise not be.

The order in which projects should be allocated to tiers

- 5.86 After the Biodiversity ISH on 4 December 2013, NE set out a position in its Annexes 1, A and B (REP-582, REP-513 and REP-514) suggesting an ordering of projects to be considered for the in

combination assessment. The NE Annexes set out the predicted collision risk for individual wind farms located at various points along the east coast of the UK between the English Channel and Scotland, which have been ordered into tiers. We refer to this eastern bird movement corridor for the purposes of this report as the 'Eastern flyway'.

- 5.87 The broad rationale behind the tiers so categorised is that the tier numbering indicates the level of uncertainty. The higher the number in the tier the greater the uncertainty that the wind farm concerned will become operational and so contribute to the in combination collision risk. NE categorised wind farms within the Eastern flyway and Scottish wind farms into the tiers described below on the basis of the actual or anticipated application submission dates, having regard to the information available to it at that time. The NE tier categories are as follows:
- Tier 1 = built and operational
 - Tier 2 = under construction
 - Tier 3 = consented (but construction not underway)
 - Tier 4 = within the planning process but yet to be consented
 - Tier 5 = project for which the regulatory bodies are expecting an application to be submitted (eg any project included within the PINs programme of NSIPs as a result of the prospective applicant serving notice of a proposed application under s46 of the PA2008).
- 5.88 The applicant has approached the ordering within the tiers in a way it considered more relevant to the decision making process in its additional clarification regarding ornithology (REP-576). This approach involved ordering tiers 1-3 in the date order in which consent was decided. In relation to tiers 4-5 the applicant identified expected consent dates for those OWF projects that have published timetables in the English system. The applicant advised that the Scottish projects in tier 4 are subject to technical review for collision risk, with no published timetables for the completion of that review, or for decisions. The applicant's understanding was that the HRA process including consultation and consideration of in combination effects would need to be undertaken to provide sufficient information for decisions on the applications⁴⁴. The applicant noted that in the English system '*there is a predetermined timetable for consent for decision*' and also stated '*For projects in Scotland there is not a pre-determined timetable for the decision.*'
- 5.89 NE's opinion on the Scottish OWFs as stated in it's summary of oral evidence from the Biodiversity ISH on 4 December 2013

⁴⁴ The Crown Estate announced that the Scottish Government had awarded consent to the Beatrice and MORL offshore wind projects in the Moray Firth on 19 March 2014. As this was announced after the close of this examination, the matter is not considered in this report. However, the SoS may wish to take this into account in consideration of the Rampion application.

(REP-581) was *'that should it be assumed that a site will not be consented and that the scientific evidence supports a finding of no issue alone or in-combination (via the building block method), then this can be discounted. However, if the decision maker believes that a wind farm in the process that will be granted will have a contribution, then this will need to be assessed.'* As reported earlier SNH had advised it did not wish to participate in the Rampion OWF examination.

- 5.90 The applicant therefore allocated those proposed OWF projects with a known decision date into tier 4A and those without a known decision date to tier 4B. The applicant added to NE's categories a further tier; Tier 6, signifying a known project with no published information. Both applicant and NE included East Anglia One (EAOne) OWF as a project to be included in the ordering prior to Rampion OWF.
- 5.91 The ramifications of the different ordering when considered with the other parameters over which there is disagreement are illustrated in Table 5.2 above. Differences between the applicant's and NE's ordering can be seen for gannet using avoidance rate of 99% (this gives the lowest predicted mortality). The applicant's building block approach forecasts 144 adult mortalities compared with NE's tiers up to and including Rampion (which also includes EAOne OWF), which forecasts 244 adult mortalities.

The Panel's views

- 5.92 The Panel is clear that the selection of tiers and the subsequent ordering of projects within tiers will influence the outcome of whether PBR thresholds are met or exceeded. In scrutinising the robustness of the respective approaches our starting position is to consider those projects that have consent (NE's tiers 1-3), as these provide the highest level of certainty as to likely effects. It is acknowledged that both the applicant and NE have included EAOne as the next level of their respective orderings. The examination for the EAOne DCO application has closed and in the light of its stage in the process we see no reason to disagree with the parties' categorisation in respect of that project. A reasonable precautionary approach should therefore include the predicted worst case mortality arising from the EAOne proposed OWF project. It must be emphasised that the EAOne project attracts less certainty than those projects in NE tiers 1-3 as the outcome of the relevant planning decision and the timing of any implementation are both still uncertain.
- 5.93 The Panel considered the information submitted in relation to the proposed Scottish OWFs. We noted the applicant's view that because those projects are under a different regime from the PA 2008 there was no certainty surrounding decision dates. We acknowledge there was less certainty about these Scottish OWFs at the close of the examination. We had no relevant submissions

before us from SNH and on balance considered there was insufficient certainty for the Scottish OWFs to be treated in the same category as EAOne.

The choice between the 'building block' approach and inclusion of all plans and projects within tiers to be considered in the in combination assessment

- 5.94 The applicant introduced what it referred to as a 'building block' approach in its additional clarification on ornithology (REP-576) and restates it in its response to the RIES (REP-620). This approach involved inclusion within the assessment of the wind farms in the tiers up to and including Rampion OWF; and including East Anglia One (EAOne). The applicant argued that there are precedents for this approach in the approaches adopted for the assessments undertaken for the Kentish Flats extension, Galloper and Triton Knoll DCO applications, which have been consented by the Secretary of State.
- 5.95 NE's approach sets out the full list of projects in all tiers, reflecting mortality estimates based on the data available and timing based upon published application dates. (REP-513, REP-514 and REP-582). NE's Annex submissions also approach the categorisation of projects and ordering of tiers by applying a 'building block' approach, albeit one that ordered somewhat differently from the applicant's. This point is demonstrated where NE shows that PBR thresholds would be exceeded in the tables included within Annexes A and B (REP-513 and REP-514) and in its commentary, eg '*up to and including Rampion*'. NE did not suggest that the full range of combined predicted mortality should be allocated to all planned projects outside tiers 1-3. In its response to the RIES, NE described the position regarding exceeding PBR thresholds for gannet and kittiwake in the cases for wind farms '*currently in examination by the Planning Inspectorate (ie Hornsea 1 and Dogger Bank Creyke Beck)*' (REP-630).
- 5.96 The differences in collision mortality that result from taking a building block approach or including all tiers or NE's planned projects comprising Dogger Bank and Hornsea 1 are illustrated in Table 5.2. Taking the example of gannet, the applicant's ordering and building block approach at an avoidance rate of 99% (this gives the lowest predicted adult mortality) forecasts 144 deaths, compared with 798 adult collision fatalities if all NE's tiers 1-5 are included and 318 deaths if Dogger Bank Creyke Beck and Hornsea One are included.

The Panel's views

- 5.97 Relevant published Europa guidance⁴⁵ ⁴⁶ specifies that planned projects should be taken into account in making an in combination

⁴⁵ EU Guidance on wind energy development in accordance with the EU nature legislation, 2011.

assessment, although it should be noted here that the guidance does not provide clarity regarding the definition of a 'planned project'. The questions as to what 'planned projects' should be taken into account, and accordingly how the ordering of other projects should be accommodated within the in combination assessment, are relevant and important considerations in relation to any appropriate assessment of the Rampion project.

- 5.98 The Panel's principal finding regarding the 'building block' approach is that whilst there are differences between parties in terms of detailed ordering and tiers as described above, both the applicant and NE have submitted evidence which adopt and support the principle of a 'building block' approach. Having regard to all the evidence submitted in relation to this matter, the Panel considers that a 'building block' approach, or some equivalent approach which considers all sites but allocates greater weight to projects that attract greater certainty in terms of predicted mortality, is appropriate as the basis for the decision maker's assessment in relation to any effects upon the integrity of a European site(s).
- 5.99 The Panel acknowledges that there is merit in adopting a proportionate and graduated approach to the in combination assessment. The Panel considers that the timing and planning stages of other projects and plans may be relevant but that the legal framework applicable to decision making by competent authorities is also relevant. As recognised in NE's approach, the PBR for any species that is a feature of a European site related to its conservation objectives provides a relevant and important threshold indicator that may be taken into account when considering the likely lawfulness of any in combination effects attributable to planned projects.

Selection of appropriate avoidance rates for gannet and kittiwake

- 5.100 The avoidance rate used in the calculation of collision mortality makes an important contribution to the mortality numbers predicted. This can be seen by comparing figures from the same scenario with a different avoidance rate (AR) in Table 5.2. It is clear from the evidence presented by both NE and the applicant during the Rampion examination that the decision as to the appropriate choice of avoidance rate has been a matter under discussion at other recent OWF examinations. A key issue in these discussions has been whether a 98% avoidance rate (recommended to be used by Scottish Natural heritage (SNH) in the absence of post construction monitoring studies) is over-precautionary for assessment of any OWF project effects upon gannet and whether 99% is more appropriate.

⁴⁶ EC Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance of the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC, 2001

- 5.101 The applicant argued at the Biodiversity ISH on 4 December 2013 (HR-072 to HR-076) and in its response to the RIES (REP-620) in favour of the use of 99%, based on studies of the Egmond Aan Zee OWF. Studies are reported which identified 64% macro-avoidance rate for gannet (ie 64% of gannets in the study area sought to avoid the area of the OWF as a whole) and a 97.6% micro-avoidance rate (ie 97% of gannets which entered the OWF area sought to avoid coming close to individual wind turbines within the OWF), resulting in an overall combined avoidance rate of 99.136% (REP-620).
- 5.102 NE confirmed in its written representation (REP-152) that a 98% avoidance rate may be precautionary because there is evidence to show that gannet avoid wind farms. NE did agree that if the assessment is made on the basis of a 99% avoidance rate, an adverse effect on integrity for gannet can be ruled out (REP-630). In response to the RIES consultation NE referred to evidence submitted at the Biodiversity ISH hearing on 4 December 2013, which indicated that NE *regards an AR of 98% to be suitably precautionary in the face of uncertainty regarding this parameter value, and an AR of 99%, while having some evidence base, to lack any such precautionary element.*' (REP-594).
- 5.103 One of the reasons for the different collision mortality figures presented in evidence to the examination depended on whether a 98% or a 99% avoidance rate was used. It can be seen from Table 5.2 that changing the avoidance rate from 98% to 99% halves the mortality figure. Some of the applicant's ornithology submissions included mortality forecasts associated with an avoidance rate of 99% for kittiwake. However there was no evidence presented in this regard and no case made for using 99% avoidance rate and the applicant confirmed that *'For the other seabird species that are included in this submission the Applicant has used an avoidance rate of 98%, the default value set in the absence of relevant offshore wind farm post-construction monitoring reports. This default avoidance rate for seabirds other than gannet is agreed with Natural England.'* (REP-576).

The Panel's views

- 5.104 All relevant parties agreed in the case of gannet that an assumption of a 98% avoidance rate would include a precautionary element. However, there was disagreement between the parties regarding the sufficiency and adequacy of scientific evidence supporting any other figure. The applicant's argument for selection of 99% avoidance rate for gannet depends on scientific study of a single offshore wind farm. In addition, relevant European and UK legislation⁴⁷ and Europa

⁴⁷ Council Directive 92/43/EEC (The Habitats Directive), The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitat Regulations), Council Directive 2009/147/EC (Birds Directive)

guidance^{48 49} indicate that the precautionary principle should be applied in making assessments. This approach is consistent with the position adopted by NE, as the relevant scientific advisor to the Government, which disagreed with the applicant's proposed 99% avoidance rate. The Panel agrees with this position but also acknowledges that 98% avoidance rate would include a precautionary element. However we consider that insufficient convincing evidence was presented during the examination to demonstrate that a 98% avoidance rate is so exceedingly precautionary as to be unrealistic. The Panel recognises it will be for the SoS to determine which avoidance rate to use in the appropriate assessment.

5.105 In the case of kittiwake, the Panel sees no reason to adopt an avoidance rate other than that of 98% as used by all relevant parties in forecasts of mortality.

(f) Mortality figures

5.106 There was no agreement regarding the predicted cumulative adult totals to be used as the basis for the in combination assessment. Although the applicant used the collision risk figures for other wind farms as provided by NE in its Annex A and B (REP-513 and REP-514), the applicant argued that these are over-precautionary because the predictions for mortality are based on a worst case 'Rochdale Envelope' scenario selected for assessment. The applicant requested that the Panel considers the totals in the light of this argument in its clarification regarding ornithology (REP-576). This point is repeated in the applicant's comments upon the RIES (REP-620) in response to NE's view that the applicant's argument was speculative. The applicant presented examples of pre construction changes that have resulted in reduced maximum capacity and resultant turbine build-out, at other offshore wind farms compared with that consented. It then stated *'It is clear from these facts that the predicted in-combination mortality will be less than that identified by Natural England through the process of adding together the predicted mortalities produced at the application stage of each proposed development. This is not speculation but a factual based conclusion. It provides clear evidence that the existing in-combination mortality figures submitted by both Natural England and the Applicant contain a high element of precaution. The Applicant considers the ExA and the Secretary of State should give weight to this fact that all of the information available to them on in-combination predicted mortalities is based on such a high element of precaution.'* (REP-576).

The Panel's views

⁴⁸ EU Guidance on wind energy development in accordance with the EU nature legislation, 2011.

⁴⁹ EC Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance of the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC, 2001

- 5.107 In the Panel's judgement, the applicant's assertion that potential build-out of consented OWFs will be less than consented and; therefore that the resulting wind farm effects will be less than assumed in the in combination assessment provided by NE, was not supported by sufficient robust evidence. The applicant did not provide evidence of a general or consistent pattern of reduced development against permitted maxima within the projects that have been built out or where development is well advanced. As a closely related point, the applicant also did not provide evidence demonstrating that a significant number of constructed OWF projects have not been built out to the permitted extent. Referral to very few examples did not convince the Panel that a general pattern of 'reduced delivery' exists that could be relied upon for the purposes of the quantitative scientific predictions required for an in combination assessment.
- 5.108 Bearing in mind the legal force of any consent granted by the relevant decision maker, we consider it will only be possible to assess properly the existence and scale of any reduction of effects due to reduction of the scale of development below the Rochdale envelope 'worst case' when the relevant proposed projects are fully completed. In the interim any other estimates must necessarily lie within the realms of uncertainty. Future monitoring of completions should help to reduce that uncertainty but that information is not before the Panel at the time of writing.

Panel's approach to collision mortality and the assessment of adverse effects on integrity of the conservation objectives

- 5.109 To illustrate the Panel's approach we have set out the mortality positions in Table 5.3 below. As for Table 5.2, Table 5.3 refers to the mortality margin or concept of 'headroom' to demonstrate the proximity of the relevant PBR thresholds for the SPA gannet and kittiwake populations. These demonstrate the potential for adverse effects on those features of the site that are referred to in its conservation objectives.

Table 5.3 Predicted gannet and kittiwake adult mortality at Flamborough Head and Bempton Cliffs (FHBC) SPA illustrating Panel's approach

	Gannet 98% AR	Gannet 99% AR	Kittiwake AR 98%
NE Tiers 1-3 adult mortality	199	100	91
EAOne OWF additional adult mortality from FHBC	74	37	104
Total	273	137	195
Rampion adult mortality from FHBC	14	7	22
Lower PBR Threshold	286	286	250
Total adult mortality before Rampion OWF	273	137	195
Headroom before Rampion (lower PBR)	13	149	55
Headroom after Rampion	-1	142	33
Upper PBR threshold	361	361	350
Total adult mortality before Rampion OWF	273	137	195
Headroom before Rampion (upper PBR)	88	224	155
Headroom after Rampion	74	217	133

- 5.110 It is important to note that the forecast mortality figures and 'headroom' figures above, which form the basis of the Panel's approach, are the same as those in Table 5.2 under the applicant's 'building block' scenario. Whilst the figures for the minimum total effects anticipated by the Panel are the same as the effects predicted by the applicant, the rationale adopted for the Panel's approach is different. The steps taken to arrive at our findings regarding the in combination assessment are explained in more detail below.
- 5.111 The Panel's approach to the assessment starts from the position of considering the effect on mortality when only those wind farms that have been consented are included. We then agreed that the additional mortality forecast to be associated with the proposed EAOne OWF should be included within the in combination assessment because of the advanced stage that the EAOne examination process had reached at the close of the Rampion examination; namely the reporting and recommendation stage. The Panel considers that by adding the EAOne figures into the assessment the level of precaution incorporated is increased, bearing in mind the EAOne DCO application was not consented at the close of the Rampion examination. Both the applicant and NE accepted that the forecast effects associated with EAOne should be included in the Rampion in combination assessment.
- 5.112 It is clear that if current permitted schemes are built out with reduced swept area or fewer numbers of WTGs then, subject to any relevant decision(s) that may be made by the Scottish Government regarding applications for OWF consents that are

outstanding at the time of writing, the numbers above will have over-stated the predicted mortality. However the Panel does not consider that any convincing evidence was provided during the examination to support the suggestion that the ExA should take into account the likelihood that maximum extent of consents would not be built out. The Panel does not accept the argument that significant reductions in total swept area or total WTG numbers should be anticipated and had no evidence to show how any such reductions could be predicted accurately in an assessment of this kind.

- 5.113 The Panel's next step in addressing the in combination assessment was to consider the legal position of the relevant competent authorities in relation to HRA and consenting processes. Having regard to the statutory duties placed upon the SoS and Scottish Ministers under the relevant European and UK legislation⁵⁰, in our judgement it is reasonable to assume that any project that has not yet been consented would not be consented if to do so would adversely affect a designated site and thereby contravene the law. On that basis it is also reasonable to assume that the in combination effects of Rampion OWF considered together with the other relevant non consented projects would not adversely affect any European site. This is because it is up to the SoS to consider whether any particular project could be consented and that a decision to do so would be taken on the basis of the appropriate legal framework. In adopting this approach the Panel has had regard to the fact that no evidence has been presented that an IROPI case is being considered in relation to any of the planned or proposed projects taken into account in the assessment.
- 5.114 The Panel's final conclusion in relation to how relevant projects should be taken into account in the cumulative assessment has regard to the information and evidence submitted to the examination. We did not agree with the applicant's reasoning of the exclusion of all planned projects (ie those in Tier 4) subject to planning applications except for EAOne and Rampion. Neither did we consider that the full list of projects put forward by NE should be assessed. This is because we have identified no robust basis for making any specific assumption regarding the likelihood of consent for any of the 'planned' projects that would enable us to distinguish between these projects having regard to the need to understand the detail of any mitigation proposed before interpreting the predicted effects. We have considered both approaches.
- 5.115 We therefore agree with the applicant and NE that the circumstances of these applications are less certain at this stage than those projects included in the applicant's assessment.

⁵⁰ Council Directive 92/43/EEC (The Habitats Directive), The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitat Regulations), Council Directive 2009/147/EC (Birds Directive)

However, that finding does not, in our view, mean that other Tier 4 projects subject to planning applications should be omitted completely from the assessment. This is because in the Panel's view it would be difficult to support any implication or argument to the effect that projects that are the subject of an application for relevant consents are not a 'planned project'. We therefore consider that the likely effects of Tier 4 projects should be taken into account. However we consider that they should be considered on a generic basis only and in a way that allows for the legal position to be taken into account.

- 5.116 This conclusion, together with the absence of any IROPI case submitted to or agreed by a decision maker, are significant factors in shaping the approach adopted by the Panel to its conclusion regarding the 'in combination' assessment, which follows. We find that it is most likely that the level of 'in combination' mortality in relation to both gannet and kittiwake features of the FHBC SPA arising from the projects identified in the applicant's in combination assessment, together with any additional Tier 4 projects that may be consented from the list put forward by NE, would lie somewhere between the total level of in-combination effects calculated by the applicant and the maximum PBR thresholds identified by NE, as set out in Table 5.2. We therefore take into account a range of possible in combination effects extending between the applicant's totals at the bottom up to the maximum figures for NE tiers 1-4 illustrated in Table 5.2 at the top.
- 5.117 From Table 5.3 above it can be seen that there is 'headroom' in terms of the margin between appropriate PBR thresholds and the predicted mortality for both gannet and kittiwake, as in all cases the upper PBR threshold is not met. In view of the levels of risk to the PBR for gannet and kittiwake illustrated in the assessment tables included in this report, the Panel was not convinced that the evidence presented in this examination to support 99% avoidance rate was sufficiently robust (as it only related to one study of one OWF). Applying an avoidance rate of 98%, Table 5.3 shows that the lower PBR threshold for gannet is exceeded, but only by one predicted fatality; and using the upper PBR threshold, there is 'headroom' for 74 birds. If the SoS decided to adopt an avoidance rate of 99% for gannet, neither lower nor upper thresholds would be exceeded. The 'headroom' above lower threshold would amount to 142 birds and above the upper threshold would amount to 217 birds. In the case of kittiwake, 'headroom' at the level of 33 birds remains with the lower PBR threshold and at 133 birds when the upper threshold figure is applied.
- 5.118 The Panel did not consider further Tier 5 projects (projects for which the regulatory bodies are expecting an application to be submitted) where relevant and robust detailed assessment data is not available. It is noted that although NE listed Tier 5 projects in its Annexes it did not refer the Panel to figures that included these

proposed projects. It also did not put forward a specific recommendation as to which 'planned projects' should be counted into the assessment, but it did on two occasions refer the Panel to the mortality figures derived from considering two 'planned projects'; namely Dogger Bank Creyke Beck and Hornsea 1, which if included in the assessment on the basis of the full extent of the figures provided by NE would result in PBR thresholds being exceeded.

- 5.119 We also accept limitations upon the overall combined level of effects attributable to Tier 4 sites (within the planning process yet to be consented) because of the fundamental assumption that relevant governmental decision makers charged with clear statutory duties to consider whether any particular project could be consented would do so on the basis of the appropriate legal framework applicable to habitats.
- 5.120 Having regard to the tabulated forecast mortality figures based on the assumptions and methodology described above, the Panel finds that the Rampion assessment demonstrates that maximum PBR thresholds would not be exceeded if the applicant's approach were to be adopted. The gannet mortality resulting from taking into account the projects as outlined above would be 287 birds, compared with a lower PBR threshold of 286 and an upper PBR threshold of 361. The kittiwake mortality resulting from taking into account the projects as outlined above would be 217 birds, compared with a lower PBR threshold of 250 and an upper PBR threshold of 350. However, when an allowance is made for 'planned' projects in Tier 4 then, as demonstrated by Table 5.2, the minimum PBR threshold may be exceeded at the top of the range.
- 5.121 Taking into account the content of the application documents and all the information placed before the Panel during the course of the examination, it is further considered that the methodology and assumptions applied in order to reach this conclusion have included a necessary and appropriate element of precaution.
- 5.122 Having regard to the Panel's findings regarding the HRA considered above, in the event he decides to undertake an appropriate assessment, the SoS may conclude that there would be no likely significant effect upon the qualifying features of gannet and kittiwake at the Flamborough Head and Bempton Cliffs SPA arising from the proposed Rampion OWF when assessed alone. However on the basis of the approach adopted by the Panel it is not possible to exclude the potential that there may be a significant effect when the Rampion OWF is considered in combination with other relevant built, under construction and planned projects where the total effects fall between the minimum and maximum PBR thresholds as set out in Table 5.2.

5.123 The SoS will need to decide whether to take into account any effects upon the Flamborough Head and Bempton Cliffs SPA attributable to the two OWFs consented by the Scottish Government in the Eastern flyway. The Panel does not take these decisions into account in this report as the decisions were made following closure of the Rampion examination. The issues relating to the Scottish OWF applications discussed during the examination, but discounted are set out above.

'Headroom' and Strategic Review

5.124 The reasoning set out above takes account of what can be interpreted as exploitation of available 'headroom' between the assessed mortality figures attributable to a project's effects on a European site and the relevant PBR thresholds. In this context we draw the SoS's attention to comments made by NE regarding the need for a strategic review of the combined effects of existing, under construction and planned North Sea developments upon European sites. These comments were made at the Biodiversity ISH and in NE's summary of oral proceedings (HR-072 to HR-076 and REP-581).

5.125 In its response to the RIES (REP-620), the applicant commented regarding the differences between a building block approach and a strategic approach, which it defined as *'taking all schemes currently in the planning system regardless of likely decision timescale or prospects of consent being granted'*. The applicant went on to mention a 'coping strategy' that it understood is being developed by the Department of Energy and Climate Change (DECC) and commented that the scale of the issue and the timescale required to complete the relevant work would extend beyond that applicable to decision making in relation to the Rampion DCO application. The applicant also repeatedly made points regarding lack of policy guidance when explaining its position in relation to likely significant effect.

5.126 NE also referred to the need for a strategic review by DECC at the Biodiversity ISH (HR-072 to HR-076) and commented as follows in its written summary of oral views presented (REP-581): *'The unspoken issue is the risk to this or a future application as a result of cumulative bird collisions, as described by Dr Caldwell. The concerns of E.ON are appropriate; however it is not the role of a developer or an SNCB to produce that guidance. With all due respect, Natural England recommends that the panel include this in their report to the SoS to try and ensure the void in strategic guidance is filled'*.

Matters arising during examination on consideration of alternative solutions, imperative reasons of overriding public interest (IROPI) and Compensatory measures

- 5.127 The Panel invited comment or submission of further information regarding consideration of alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures in our final Rule 17 request (PD-008) in case an adverse effect on integrity could not be ruled out. The applicant stated that it did not wish to provide any further information on these matters '*having regard to its clear view that a likely significant effect can be excluded.*' (REP-632).

Concluding remarks and recommendations

- 5.128 The information before the Panel has been considered in accordance with the Conservation of Habitats and Species Regulations. The Panel's final conclusions and recommendations to the SoS with regard to European sites are set out below. In coming to these conclusions, we have sought to ensure that they are proportionate and that they take full account of the relevance, jurisdiction, timing, planning stage and legality of proposed and planned projects in addition to projects in existence and under construction.

Mitigation

- 5.129 The Panel concludes that potential cumulative indirect adverse effects on fish-eating bird species which would result, if piling activities overlapped from Rampion and Navitus Bay OWFs, are satisfactorily secured. Agreement was set out in a signed agreement between the developers for the proposed Rampion and Navitus Bay OWFs. The agreement set out the principles of a joint approach and specifically an option to monitor overlap through submission of logs through the MMMPs in the event construction activities overlap. This was agreed to address adverse effects on marine mammals when and where driven or part driven foundations are planned to be used. Relevant parties agreed that mitigation would also address concerns regarding indirect effects on bird species through adverse impacts on prey. The Order requires the production of an MMMP for this project, to be agreed in writing with the MMO in consultation with NE and JNCC.

Flamborough Head and Bempton Cliffs SPA

- 5.130 Having regard to the evidence presented during the examination and the related assessments, it is concluded that the only European site for which there is a possible likely significant effect after mitigation of indirect effects on prey species, is the Flamborough Head and Bempton Cliffs SPA. The possible significant effect might arise from the collision risk to the gannet and kittiwake features of the conservation objectives of the SPA when the effects of the Rampion OWF project are assessed in combination with other relevant plans and projects.

5.131 The Panel's principal conclusions in relation to recommendations in relation to Flamborough Head and Bempton Cliffs SPA are as follows:

- We concur with relevant parties who have agreed that the predicted contribution to collision mortality from the Rampion project alone is very small.
- We accept that the addition of forecast Rampion OWF mortality, when assessed against PBR thresholds would not exceed any thresholds that are not already exceeded.
- We agree with the applicant and NE that mitigation could not be applied to resolve uncertainty in relation to in combination adverse effects from collision risk at this site.
- We acknowledge that a collision avoidance rate of 98% for gannet contains a precautionary element; however we are not convinced that there is sufficient evidence to justify use of 99% in any appropriate assessment that the SoS conducts.
- On the basis of the information presented to the panel, we do not consider that any weight should be given to the applicant's argument regarding the lower build out rates of some consented wind farms and the over-stating of mortality due to the use of worst case scenarios as the basis for the relevant assessments.
- We accept that inclusion of the EAOne OWF in the mortality calculations is appropriate and suitably precautionary.
- We do not consider either the applicant's reasoning concerning the suggested ordering of projects to be appropriate and neither do we consider it appropriate to take into account the full extent of every Tier 4 project and nor the Tier 5 projects listed by NE. This is because the applicant does not provide a robust rationale for excluding consideration of a number of planned projects subject to applications and because both approaches do not explicitly take account of the legal constraints applicable to government decision makers in relation to decisions affecting tier 4 projects (ie those which are subject to a submitted application in the planning process but not consented).
- We conclude that the likely total cumulative effects in relation to the gannet and kittiwake features of the Flamborough Head and Bempton Cliffs SPA would lie in a range between the applicant's calculated totals and the maximum PBR thresholds set out in Table 5.2. In the upper part of this range the in combination effects would exceed the minimum PBR threshold where an appropriate assessment is normally considered necessary. The Panel therefore agrees with NE's

submission that an adverse effect on integrity of this particular SPA cannot be ruled out.

- 5.132 Under the Habitats Regulations, where the competent authority concludes that a development is likely to have significant effects on a protected site, or where there may be scientific doubt as to the absence of a significant effect, it must carry out an appropriate assessment and *'may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be)'*. We recommend that an appropriate assessment of the in combination effects is carried out by the SoS. We also conclude that there is sufficient information for the SoS to undertake an appropriate assessment of the project, if he so decides. The relevant statutory and regulatory bodies were informed that the consultation on the RIES may be relied upon by the SoS as consultation under Regulation 61(3) of the Habitats Regulations.
- 5.133 Any argument that there may be uncertainty in relation to an absence of an adverse effect in relation to the gannet and kittiwake features of the Flamborough Head to Bempton Cliffs SPA would arise if the SoS considers the grant of consent for a project or projects that would result in mortality above the relevant minimum PBR thresholds to be likely. The SoS will need to come to a view regarding the likelihood of this possible occurrence. However, as demonstrated in Table 5.2, that possibility falls within the range of possibilities considered most likely in the Panel's assessment.

6 PANEL'S CONCLUSIONS REGARDING THE CASE FOR DEVELOPMENT

The Policy Background

- 6.1 A comprehensive assessment of the policy position relevant to the proposed DCO is set out earlier in this report at chapter 3. The Panel has taken all the policies listed into account in reaching its conclusions and recommendation regarding the DCO application. The following section highlights those aspects of policy that the ExA considers of particular significance to its determination by the Secretary of State.
- 6.2 The suite of Energy National Policy Statements (NPSs) was issued by the Secretary of State for Energy and Climate Change and formally designated on 19 July 2011. NPS EN-1 'Overarching National Policy Statement for Energy', EN-3 'National Policy Statement for Renewable Energy' and EN-5 'National Policy Statement for Electricity Networks Infrastructure' form the primary basis for recommendations and decisions regarding proposed energy generation from renewable sources and regarding infrastructure for electricity transmission and distribution networks.
- 6.3 The UK Marine Policy Statement (MPS) was prepared and adopted for the purposes of section 44 of the Marine and Coastal Access Act 2009 and was jointly published on 18 March 2011 by all the UK Administrations as part of a new system of marine planning being introduced to provide a planning framework development and activities in UK waters. The MPS provides the overarching framework for the preparation of Marine Plans and for decisions affecting the marine environment. At the time this report and recommendation are made the relevant Marine Plan is at an early (stakeholder engagement) stage in the preparation process and no draft has been released.
- 6.4 The Panel's conclusions regarding the applicant's case for development contained in the application before it have been reached with careful regard to the relevant designated NPSs and MPS and our recommendations are made in full accordance with those policy statements.
- 6.5 At paragraph 3.3.1 the MPS identifies that: 'a secure, sustainable and affordable supply of energy is of central importance to the economic and social wellbeing of the UK'. It adds that: 'the marine environment will make an increasingly major contribution to the provision of the UK's energy supply and distribution'. Renewable energy is expected to make a growing contribution. The paragraph confirms that 'contributing to securing the UK's energy objectives, while protecting the environment' is a priority for marine planning.

The issues for consideration in relation to all marine energy projects are set out at paragraph 3.3.4 of the MPS.

- 6.6 NPS EN-1 makes it clear at section 3.1 paragraph 3.1.1 that ‘the UK needs all types of energy infrastructure and that the scale and urgency of that need is as described for each of them...’. EN-1 continues at paragraph 3.1.4 by stressing that substantial weight should be given to the contribution that projects would make towards satisfying this need when considering applications for development consent under the PA2008. With specific reference to renewable energy, paragraph 3.3.10 advises that: *‘as part of the UK’s need to diversify and decarbonise electricity generation, the Government is committed to increasing dramatically the amount of renewable generation capacity’*. Paragraph 3.4.5 concludes that paragraph 3.4.1 *‘sets out the UK commitments to sourcing 15% of energy from renewable sources by 2020. To hit this target, and to largely decarbonise the power sector by 2030, it is necessary to bring forward new renewable electricity generating projects as soon as possible. The need for new renewable electricity generation projects is therefore urgent’*.
- 6.7 NPS EN-3 reaffirms that electricity generation from renewable sources is an important element of the Government’s development of a low carbon economy and at section 2.6 sets out policy in relation to offshore wind and factors influencing site selection and design as well as technical considerations.
- 6.8 NPS EN-5 identifies at paragraph 2.2.2 that ‘the general location of electricity network projects is often determined by the location, or anticipated location, of a particular generating station and the existing network infrastructure taking electricity to centres of energy use. This gives a locationally specific beginning and end to a line’. At section 2.3 EN-5 outlines policy regarding the general assessment principles for electricity networks and additional technology-specific considerations.

Adequacy of the Environmental Statement

- 6.9 The Panel confirms its judgment that the ES meets the definition given in Regulation 2(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations (‘the EIA regulations’). The relevant part of this regulation defines that ‘environmental statement’ means a statement—(a) that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and of any associated development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile;

and (b) that includes at least the information referred to in Part 2 of Schedule 4.

- 6.10 In making its recommendation the Panel has taken into account the environmental information as defined in Regulation 2(1) of the EIA regulations comprising of the ES and all additional information supplied during the course of the examination regarding the environmental effects of the development, as the Secretary of State is required to do under Regulation 3(2) of those regulations. For the avoidance of any doubt, in relation to this particular DCO application, the ES and associated environmental information referred to above means the environmental statement submitted by the applicant on 1 March 2013, information regarding environmental matters set out in the applicant's subsequent submissions and all representations and submissions made about the environmental effects of the development and associated development.
- 6.11 At the ISHs during the examination the Panel sought the views of IPs regarding whether the parameters as assessed in the ES were adequate and secured by the Order Limits. No concerns were raised regarding the adequacy of the spatial parameters for the ES assessment. Concerns were, however, raised by NE and by the SDNPA and WSCC regarding the adequacy of the information provided in relation to certain biodiversity and landscape/visual effects of the proposed project, including in particular information regarding trees and hedgerows, the effects of artificial illumination of the array upon night time views, the details of the proposed onshore substation near Bolney and the potential effects of any temporary construction compounds. The MMO also sought a range of additional information regarding various aspects of mitigation of marine effects and clarification of various aspects of Order/DML wording related to mitigation of environmental effects identified in the assessment.
- 6.12 During the examination the applicant submitted a significant amount of additional relevant environmental information including outline plans, visualisations representing the effects of night time illumination and an updated Design and Access Statement for the onshore substation. It also clarified the position in relation to principal and temporary construction compounds, habitats effects and marine effects and how these are addressed in the DCO. The Panel considers that in the light of the information supplied during the examination, having regard to all representations made by IPs regarding that information, the overall package of information provided is adequate to enable the Panel to make its assessment for the purposes of this report and recommendation(s) and in turn for SoS to make his decision regarding the application.

Assessing the Impacts

- 6.13 After consideration of the range of potential impacts that would be likely to arise if the proposed offshore generating station and associated electrical infrastructure were to be built and operated (see chapter 4 of this report) the Panel concludes that the principles of the proposed development are in general conformity with Government policy as described in full in chapter 3. We further conclude that, subject to the scheme restrictions (such as the piling restrictions together with the turbine and cable exclusion zones identified in the Order and supporting documents), the controls and mitigation proposed are adequate. Although some adverse impacts would remain (including some effects upon the landscape and views from the South Downs National Park), these must be balanced against the need for new electricity infrastructure projects, including large renewable energy generation schemes such as Rampion project. The relevant NPSs provide the planning policy framework within which this balance must be struck.

Appropriateness of planning obligations with WSCC and the SDNPA

- 6.14 A s106 agreement was concluded between the applicant and WSCC making a number of provisions for the purposes of mitigation measures that would be required if the proposed Order should be made. It also provides for the developer to pay for the monitoring of effects of the project upon specified areas outside the National Park.
- 6.15 The Panel finds the mitigation secured by the s106 agreement between the applicant and WSCC is necessary to make the development acceptable in planning terms and directly related to the development. However by the close of the examination no s106 agreement had been concluded between the applicant and the SDNPA. The applicant submitted a UU in favour of the SDNPA, the terms of which are considered inadequate by the SDNPA.
- 6.16 The Panel considers that, when the mitigation provided by the applicant as a whole is taken into account, the acknowledged specific deficiencies in the UU are outweighed by the benefits of the scheme and are not so great as to recommend refusal of the application.
- 6.17 The Panel therefore concludes that on balance, taking into account the relevant NPS policy framework, s106 agreement with WSCC, the UU in favour of the SDNPA and the mitigation secured in the recommended Order, consent should be granted for the project due to the contribution that the project would make towards meeting the urgent need for renewable low carbon sources of energy. In our judgement the level of benefits attributable to the 700MW would outweigh the level of damage likely to be

occasioned to the National Park and its environmental setting and would also outweigh the harm to the objectives of designation of the South Downs National Park, including its outstanding long distance views.

Biodiversity, biological environment and ecology

- 6.18 The Panel has examined the biodiversity matters arising in relation to the DCO application and has explored the evidence and potential impacts through written and oral examination. Two principal issues where a possible conflict could arise and where adverse impacts could occur are in relation to bird species and marine environment.
- 6.19 The Panel concludes that there are likely to be significant effects upon only one designated European site – the Flamborough Head and Bempton Cliffs (FHBC) SPA –when the cumulative effects of the project are considered together with the effects of other existing, under construction and planned projects. The Panel advises that an appropriate assessment should be undertaken in relation to this site.
- 6.20 The Panel examined the effect of piling on fish species, in particular herring and black bream, cuttlefish and seahorses. Restrictions are recommended in relation to construction operations in order to safeguard or otherwise mitigate impacts upon black bream spawning (Array DML), herring spawning (Array DML) and cuttlefish (Export Cable DML).
- 6.21 In the light of these findings and conclusions the Panel advises that the SoS may conclude, subject to the outcome of the AA if SoS considers this to be necessary, that the requirements of NPS EN-1 regarding biodiversity as set out in Section 5.3 have been met and that there is nothing outstanding to that principal issue in relation to that matter that would argue against the recommended Order being made.

Effects during construction and operation

- 6.22 The Panel has had regard to all the relevant information in the content of the ES, the information received during the examination and gained during accompanied and unaccompanied site visits and concludes that the assessment contained in the ES in relation to all the relevant construction and operational effects is robust and appropriate.
- 6.23 We further conclude that the principal likely effects of construction and operation of the proposed project upon human beings identified in the ES and considered during the course of the examination are capable of mitigation.
- 6.24 PHE identified an issue related to electro-magnetic field effects. Although the applicant and PHE were in the process of discussing a

SoCG concerning a propose requirement this was not resolved during the examination, this omission seems likely to have been an oversight. We recommend that the SoS incorporates suitable wording in the order if he considers it necessary⁵¹. The Panel's view is that the issue can be resolved and it is not sufficient to justify refusal of the order.

- 6.25 We also find that the other mitigation provisions set out in the recommended Order and discussed in chapter 4 would make adequate provision for mitigation.
- 6.26 In addition to the mitigation measures in relation to the matters outlined above, the recommended Order provides for restoration of land used temporarily for construction and for decommissioning of the onshore substation following its cessation of use.
- 6.27 The Panel concludes that there are no matters outstanding in relation to the effects during construction and operation that would argue against the recommended Order being made.

Landscape/seascape, visual and heritage

- 6.28 In the Panel's judgment the most significant impact that would not be avoided is the landscape and visual impact of the proposed offshore structures upon the extensive scenic views from the high land within the South Downs National Park, including many parts of the South Downs Way National Trail. The Panel considers that while there would be some landscape and visual effects during construction, the principal adverse effects would arise during the operation phase. These would relate to the offshore array and substations, where the assessed effects upon long distance views from the National Park and Heritage Coast (following the mitigation afforded by the structures exclusion zone in the eastern part of the Order Limits) could not be mitigated. The Panel notes paragraph 5.9.13 in NPS EN-1 indicates that: *'The fact that a proposed project will be visible from within a designated area should not of itself be a reason for refusing consent'*.
- 6.29 The Panel has had regard to the statutory purposes of designation of the South Downs National Park, including the specific special qualities identified by the survey of park users and confirmed by the South Downs Park Authority. We have also had regard to the conservation of the natural beauty of the countryside in the National Park in making our assessment. While there could be some localised adverse direct effects within the Park arising from construction of the cable corridor through certain areas of chalk grassland, including the prominent area of grassland at the Tottington Mount Scheduled Ancient Monument, these direct effects would be localised. The Panel concludes that the worst direct impacts upon the landscape of the National Park would be

⁵¹ This is discussed in the section on 'Effects of construction and operation' in chapter 4 of this report

relatively short-lived and although there might be some uncertainty regarding residual effects upon chalk grassland The Panel notes that the applicant is working closely with experts from Kew to minimise the risks of failure and considers that the application of high level specialist skills will be helpful to ensuring success.

- 6.30 The Panel has considered the likely loss of certain sections of hedgerow and the potential for loss of chalk grassland should the restoration measures fail. However the Panel concludes that the mitigation afforded by putting the proposed export cables underground would be of considerable assistance to mitigating direct landscape and visual impacts.
- 6.31 It is further concluded that the risk of direct landscape losses within the National Park, although potentially significant to certain localities, especially Tottington Mount, would be outweighed by:
- the contribution that would be made to the public interest by the project in helping to meet the identified need for renewable and low carbon forms of energy and
 - the high cost of and limited scope for developing a route outside of the designated National Park area, taking account of the information considered regarding alternatives and discussed in chapter 4 of this report.
- 6.32 The Panel also notes that the introduction of the structures exclusion zone would have a limited positive mitigation effect by reducing the horizontal extent of the array. The Panel accepts NE's advice that, to secure mitigation of relevant landscape, seascape and visual effects, arising from the construction and operation of the proposed Rampion array, reduction in the horizontal extent of the array should be given priority over any reduction in the height of the maximum of turbines.
- 6.33 The panel concludes that there is a risk of adverse effects upon heritage assets, including the Tottington Mount Scheduled Ancient Monument and both listed buildings and conservation areas which may be seen in relation to a setting that would include views of the sea and of the Rampion project. However, on balance, noting in the absence of objections from English Heritage and the relevant local planning authorities the Panel gives due regard to the assessed effects upon heritage assets and upon their settings and concludes that this effects would not be so significant as to outweigh the need for new large scale energy infrastructure or preclude the making of the recommended Order.
- 6.34 In the light of all the points reviewed above, including the mitigation now provided for in the recommended Order, the Panel considers that none of the matters in relation to the potential or likely landscape, seascape and visual impacts including impacts on

Scheduled Ancient Monuments, listed buildings and other heritage assets would be so adverse (following mitigation where mitigation is possible) as to justify refusal of the Rampion DCO application.

- 6.35 However, although much detail remains to be resolved, the Panel considers that the provisions now made in the recommended Order would enable development of a scheme that would display a range of elements of good design, as required to meet the criteria set out in NPSs EN-1, EN-3 and EN-5.

Marine and coastal physical processes

- 6.36 In relation to all the matters raised by IPs in relation to marine and coastal processes, the Panel has had regard to the information submitted by the applicant and the submissions of the EA, local authorities and other parties during the examination. The Panel is satisfied that necessary controls and mitigation are secured by the relevant conditions within the Order.

- 6.37 Condition 11 requires submission of details for the MMO approval, including a fisheries liaison plan, a scour protection management and cable armouring plan and a cable specification and installation plan (including details of cable burial). Condition 15 of both DMLs requires pre-construction monitoring and surveys including a survey to determine the extent of fish and shellfish populations and spawning activity within the Order limits in which it is proposed to carry out construction works, and any wider areas where appropriate.

- 6.38 On this basis the Panel concludes that the requirements of EN-1 and EN-3 have been met and there are no outstanding matters in relation to marine and coastal processes that would argue against the recommended Order being made.

Navigation and risk

- 6.39 In assessing navigation and risk the Panel has had regard to the information provided by the applicant and relevant submissions regarding navigation and risk matters, including the comments of the MCA and Trinity House. The Panel notes that agreement was reached between the applicant and the Shoreham Port Authority regarding the proposed cable exclusion zone, which precludes the laying of cables across the main anchoring area for the port. The Authority also welcomed the proposed structures exclusion zone as it considered that any enforced diversion of vessels seeking to access the port from the south would be reduced.

- 6.40 In relation to navigation and risk aspects including affecting vessels other than cargo ships, the Array DML at Schedule 12 of the recommended Order (Condition 11(d)(v) Fisheries Liaison Plan) requires provisions to be made for liaison between the developer and relevant fishing and recreational sailing interests.

This provision is reflected in the terms of the SoCGs between the fishing groups and the applicant.

- 6.41 The interests of commercial and recreational user are also taken into account in the provisions of Array DML conditions 6 (Navigational practice, safety and emergency response), 7 (Aids to navigation), 11(i) (Diver mitigation plan) and 14 (Equipment and operations of vessels engaged in licensed activities). Conditions 6,7 and 11 are also replicated in relation to the Export Cables DML.
- 6.42 In the light of these points the Panel is satisfied that necessary controls and mitigations are secured by the relevant conditions within the Order and that there are no matters outstanding in relation to navigation that would argue against the recommended Order being made.

Socio-economic and tourism

- 6.43 The panel agrees with the applicant's broad ES conclusions in relation to the socio-economic effects of the Rampion project proposals.
- 6.44 The Panel considers that outside the National Park the effects on tourism would be limited in extent, especially along the coast, where the setting is heavily urbanised. Within the National Park, some areas would experience a change in view. However, the mitigation proposals noted above and discussed in detail in the landscape and visual section of this report, would afford some level of mitigation of the impact. It is therefore the Panels judgement that the effect of the proposed Rampion project on tourism is not so significant a matter as to justify refusal of the Order.

Transport and traffic

- 6.45 With regard to the various concerns raised about traffic effects and impacts, particularly during the onshore construction phase of the development and in relation to the large onshore substation proposed for a site near Bolney, the Panel accepts that there might be some localised adverse effects, especially near the access to the substation site from the main highway network.
- 6.46 However, the detailed traffic and environmental planning and management arrangements secured in the Order requirements, including the Construction Environmental Management Plan, the Construction Traffic Management Plan and other measures like control over hours of working should assist either in preventing adverse effects or in keeping any effects to an acceptable minimum. The Panel also notes the provisions for liaison with local residents through the Twineham Parish Council as agreed in the SoCG between the parties.

- 6.47 On this basis the Panel concludes that the requirements of EN-1 and EN-3 have been met and there are no outstanding matters in relation to traffic and transport that would argue against the recommended Order being made.

Other Matters

- 6.48 In relation to all other matters such as noise and vibration, commercial fishing, civil and military aviation and defence, decommissioning, grid connection and aspects of good design the Panel recognises that the proposed project could give rise to some localised adverse effects – especially noise and vibration effects close to the onshore substation and its accesses during the construction phase of up to 28 months.
- 6.49 The Panel has given all these matters detailed consideration during the examination and detailed its findings in chapter 4. Having regard to the policies set out in NPSs EN-1, EN-3 and EN-5, none of the localised adverse effects identified have been demonstrated to be likely of such significant scale or intensity following mitigation and application of relevant controls as to justify refusal of the application having regard to the wider public interest.

Habitats Regulations Assessment (HRA)

- 6.50 HRA is a matter for consideration and determination by the competent authority, which in this case is the Secretary of State for Energy and Climate Change as decision maker.
- 6.51 The ExA Panel does not agree with the applicant's assumptions and suggested ordering of the projects nor did we consider that the full list of projects put forward by NE should be assessed. We consider that a wider range of 'planned' projects should be taken into account than proposed by the applicant. Having regard to the legal constraints upon decision makers, on the basis of the information before us regarding the habitats effects, we conclude that the only European site for which the likelihood of a significant adverse effect could not be ruled out would be the FHBC SPA.
- 6.52 The Panel considers that, on the information before them during the examination, due to the relevant legal framework, in the absence of any IROPI case it is unlikely that the in combination effects would exceed the upper PBR thresholds for both the gannet and kittiwake species. An adverse effect on integrity is therefore unlikely.
- 6.53 It is not practicable for the ExA to reach more precise conclusions without pre-judging the outcome of the consenting processes for the various projects currently under consideration in both the English and Scottish jurisdictions, which would clearly be inappropriate. The Panel does not have access to the detail of any

mitigation proposed and therefore is not in a position to understand the likely net effects of any individual project following mitigation. We therefore rely on a generic assessment that has regard to the legal framework.

- 6.54 This assessment concludes that there is doubt as to the absence of a significant in combination effect upon two features of the SPA, namely gannet and Kittiwake, when the effects of the Rampion OWF project are considered in combination with those of other relevant existing, under construction and planned projects. Notwithstanding this conclusion reached in the light of the relevant habitats regulations, the Panel agrees with the applicant and NE that when considered alone the effects of the Rampion project would be small in scale and that the project would not give rise to any significant effects upon the FHBC SPA that would not arise otherwise. Its effect on the FHBC SPA would therefore be marginal. However, the Panel agrees with NE that in relation to the provisions of the habitats regulations an appropriate assessment is needed in relation to the 'in combination' effects.
- 6.55 In relation to the scope of any mitigation that might be delivered through the Rampion DCO there was also agreement between the applicant and NE that no mitigation of the 'in combination' effects of the assessed projects upon the FHBC SPA would be possible.
- 6.56 In view of the in combination ornithological assessment results the SoS may also wish to take into account points made by the applicant and NE during the examination regarding the need for strategic review of the habitats position in relation to ornithology in relation to the likely ornithological effects of existing and planned marine developments in relation to the Eastern flyway including the range of planned North Sea projects.
- 6.57 Having regard to the points that the Rampion OWF would not make a significant contribution to any adverse in-combination ornithological mortality effects likely to arise in relation to relevant existing, under-construction and planned projects, and subject to the Secretary of State's appropriate assessment arriving at the same or similar conclusions, the Panel sees no reason why considerations of European sites or HRA matters should preclude the SoS from making a DCO authorising the proposed Rampion offshore wind generating station and associated electricity transmission infrastructure, This conclusion takes account of and is subject to the mitigation measures included within the recommended Order. These measures have been identified as necessary to avoid any significant adverse impacts additional to those that may arise from other projects

Overall Conclusions regarding the Case for Development

- 6.58 At s104 the Planning Act 2008 (as amended) requires that an application must be decided in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) of s104 apply. NPS EN-1 (para 4.1.2) advises that, subject to the provisions of s104, the starting point for the determination of a DCO application relating to an energy NSIP is a presumption in favour of granting development consent.
- 6.59 In reaching our overall conclusions regarding the case for the proposed development the Panel has had regard to the relevant NPSs, the MPSs, the LIRs submitted and all other matters that it considers both important and relevant to its report and recommendation and to the Secretary of State's decision. We have also given careful consideration as to whether determination of this application in accordance with the relevant NPSs and the MPS would lead the UK to be in breach of any of its international obligations where relevant. We have also considered the legal duties imposed by the Human Rights Act 1998. We have given careful consideration to the potential effects of the project upon heritage assets and their settings, including those of relevant listed buildings, conservation areas and Scheduled Ancient Monuments. Finally, in the light for the statutory duties set out in the 1949 National Parks and Access to the Countryside Act (as amended), the Panel has regard to the statutory purposes of designating the National Parks, together with implications of the proposed project for the acknowledged special qualities of the South Downs National Park, including heritage assets and Scheduled Ancient Monuments. We have concluded that in all respects the Panel has complied with these duties.
- 6.60 Bringing our examination, reporting and conclusions together in order to formulate the recommendation in relation to the case for development, the Panel has had full regard to the identified need and support for renewable power generation and delivery of this power to the centres of energy use as confirmed by NPSs EN-3 and EN-5. In addition NPS EN-1 and EN-3 make it clear that the need for new renewable electricity generation projects is urgent. In this regard EN-1 also identifies that substantial weight should be given to the contribution which projects would make towards satisfying the identified need when considering an application for development consent under the PA2008. Based on our assessment of the application in the Panel's judgment the Rampion Offshore Wind Farm is clearly a project of the type supported by NPSs EN-1, EN-3 and EN-5.
- 6.61 The Panel has explored and considered the impacts of the proposed project and has assessed the adequacy of the ES set against the background of the defined project and of the wider environment within which it is proposed to be located. It has also considered the information necessary to enable a conclusion to be

reached by the competent authority regarding habitats regulations assessment (HRA) matters.

- 6.62 At each stage of the process of formulating its findings, conclusions and recommendation(s) to the SoS, the Panel has sought to weigh the likely adverse effects or impacts of the project against its likely benefits. Overall, for the reasons set out in this report, the Panel concludes that the benefits of the proposed Rampion project would outweigh its negative effects and impacts. In planning and development terms the case for granting development consent for the proposed project is made.

7 COMPULSORY ACQUISITION

7.1 This chapter of the report addresses the compulsory acquisition and temporary possession powers sought in the Rampion Development Consent Order application. The matters covered include:

- the status and scope of the request for powers in relation to compulsory acquisition, temporary possession and restrictive covenants
- the purposes for which the land and rights proposed to be acquired compulsorily and for which the proposed temporary possession and restrictive covenants are required
- modifications proposed to existing compulsory acquisition legislation
- the requirements of the Planning Act 2008
- how the case for compulsory acquisition, temporary possession and restrictive covenant powers was examined
- the applicant's general case for compulsory acquisition, temporary possession and restrictive covenant powers
- the applicant's case in relation to specific parcels of land
- the objectors' cases
- the availability and adequacy of funds, and
- the Panel's conclusions regarding the proposed CA, temporary possession and restrictive covenant powers, including conclusions regarding public benefit, alternatives, Human Rights Act 1998 considerations.

The request for compulsory acquisition, temporary possession and restrictive covenant powers

7.2 The Project is a Nationally Significant Infrastructure Project (NSIP) under Section 15(3) of the 2008 Act (offshore generating stations) and comprises the following:

- Up to 175 wind turbines with up to 700 MW generating capacity (Work No. 1(a)); and
- Undersea cables between the wind turbines and the offshore substations for the transmission of electricity and electronic communications between these structures (Work No. 1(b))

- 7.3 Section 115 of the PA2008 enables development consent to be granted not only for an NSIP, but also for 'associated development'. Associated development for the Project within the meaning of section 115 includes the following:
- Up to two offshore substations (Work No 2)
 - A connection or connections between the offshore substations and the onshore export cable corridor, consisting of up to four cables laid underground along routes within the Order limits seaward of MHWS including one or more cable crossings (Work No 3A).
 - A series of onshore works (Works No 3B to Work No 24) to construct the onshore export cables corridor from the export cables landfall point to the proposed new onshore substation near Bolney. Up to four onshore underground circuits (each circuit containing up to three cables installed inside separate cable ducts and grouped together in a trefoil arrangement), telecommunication cables and with jointing pits would transmit electricity from the landfall site to the proposed new onshore substation adjacent to the existing National Grid substation at Bolney. Suitable protection would be laid above the cables, or the cables will be laid at sufficient depth, to comply with Regulation 14 of the Electricity Safety Quality and Continuity Regulations 2002.
 - Works related to construction of the new onshore substation near Bolney, Mid Sussex, (Work No 25) and to enable its construction, maintenance, landscaping and new footpath to replace a closed path (Works Nos 26-32).
 - Underground circuits between proposed the new Rampion onshore substation and the existing National Grid Bolney substation in order to connect the offshore wind farm to the National Grid.
- 7.4 Schedule 1 to the Order sets out in full the works to be authorised.
- 7.5 The Rampion application seeks the inclusion of compulsory acquisition (CA) powers in the Order. As required under the relevant statutory provisions and guidance, the application therefore includes information to support the CA element of the proposals. The rationale for seeking compulsory acquisition powers is set out in the Statement of Reasons (SoR) (APP-031). The funding arrangements proposed are explained in the Funding Statement (APP-032). And the specific plots of land and interests which are proposed to be acquired compulsorily are identified in the Book of Reference and Land Plans (REP-606 to REP-614 and APP-009).

- 7.6 The application also seeks to establish permanent rights over a range of plots of land, including land within the onshore cables corridor, as set out in the Book of Reference. For example, the rights sought include rights of access for maintenance purposes, rights to carry out maintenance of the installed cables and equipment as required, rights to control and manage the growth of trees and shrubs in order to protect the cable infrastructure and restrictive covenants to safeguard and protect the export cables after their installation.
- 7.7 The application also seeks the inclusion of temporary possession and use powers in the Order. Although they do not involve compulsory acquisition of land or permanent rights in land, temporary possession and use powers relate to control over, occupation and use of land and therefore interfere with existing property rights and interests. They are therefore akin to compulsory powers in some respects. In the case of the Rampion application they are sought primarily for means to facilitate construction of the project, including temporary possession and occupation of land and temporary works to land to provide construction accesses, construction compounds to accommodate and store materials and equipment and site management and staff facilities, together with any associated works and operations.
- 7.8 As the justification for seeking these additional powers raises issues closely related to those concerning the proposed compulsory acquisition of land and rights they have been examined in a similar fashion to the proposed CA powers.
- 7.9 The land and interests for which CA powers are sought can be summarised as follows,

Export cable corridor:

(a) *Open public foreshore area*

- Acquisition of permanent new rights and temporary possession powers in relation to the open public foreshore area on and adjoining a section of the beach at Worthing to accommodate the export cable landfall point, together with crossing under the beachside A259 coast road to Worthing Pleasure Park.

(b) *Cable corridor*

- Temporary possession and acquisition of rights for establishment of a construction compound together with permanent rights to construct, operate and maintain export cables installed into up to four parallel trenches occupying a working strip of approximately 30m located within Order Limits of approximately 40m (in order to provide scope for micro-siting) extending between Worthing Park (Brooklands

Pleasure Park) and the proposed new onshore substation site near Bolney.

- The export cable corridor would extend approximately 26.4 km northwards from the landfall point and Worthing Park across the municipal golf course in the Park and across agricultural land through largely rural areas, avoiding coastal urban areas by routeing through a green wedge located between east Worthing and west Brighton. The cable corridor route includes permanent rights including rights of access and maintenance and temporary possession powers necessary to route cables through ducting in the main laid in trenches, but also using horizontal direction drilling operations under the Brighton-Worthing railway, a number of roads (including the A27 trunk road) and the River Adur and through the Tottington Mount Ancient Monument), to the proposed new substation near Bolney, including a connection between that substation and the existing National Grid substation that it adjoins.
- The Order's CA provisions relating to the cable corridor include temporary possession powers and the acquisition of permanent rights that would enable not only construction of the necessary trenches and HHD drives to facilitate installation of the cables but also the construction of temporary compounds, haul roads, working areas and other measures considered necessary by the applicant to support delivery of the proposed project through its construction and operational phases. Permanent rights would enable long-term access and maintenance of the cables and where relevant restrictive covenants would seek to protect the installed cables.

(c) *Onshore substation*

- Acquisition of a freehold interest in approximately 0.3 km² of land to facilitate construction of the Bolney onshore substation. From evidence submitted in the Statement of Reasons, other application documents including the ES and from oral submissions during the relevant hearings it is clear that the proposed area for acquisition includes sufficient land to facilitate relevant landscaping (earth moving and planting), security (fencing and lighting) and drainage works, the construction of relevant administrative office, equipment and materials storage and messing facilities as well as the substation buildings and the installation of apparatus to support the technical functions of the substation.
- Temporary possession of land to construct and operate a temporary construction access from Twineham Lane to the proposed substation site.

- Acquisition of permanent rights in land to construct, secure and maintain a permanent maintenance access to the substation from Bob Lane that would also provide access to adjoining agricultural fields for the relevant owner and farmer of that land.

The purposes for which land and rights in land proposed to be acquired are required and for which temporary possession and use powers are required

7.10 The details of the purposes for which the specific plots of land proposed for acquisition (either of freehold or of new rights over land) are required are set out in the Statement of Reasons and Book of Reference included in the application documentation. Schedule 7 of the Order sets out the purposes for the new rights sought. The purposes for which temporary possession and use powers are sought are detailed in Schedule 9 of the DCO. Those stated purposes address not only acquisition of land and rights in property in order to facilitate the construction, operation and maintenance of the proposed works but also to enable the construction, operation and maintenance of associated development, including the export cable, onshore substation, temporary construction compounds and accesses.

7.11 As a quantitative summary of what is proposed, CA and temporary possession/use powers are required for land and property rights in land in order:

- to remove existing easements servitudes and other private rights in relation to all plots identified in the Book of Reference,
- to acquire freehold in 6 plots,
- to acquire new rights in 86 plots,
- to take temporary possession and use of 102 plots.

Crown land

7.12 The relevant policy guidance in relation to compulsory acquisition of Crown Land is the Secretary of State's Guidance on Compulsory Acquisition issued by DCLG in February 2010.

7.13 The initial Book of Reference submitted in support of the Rampion application proposed the compulsory acquisition of a number of property rights in Crown Land in Part 4 of its Book of Reference. They can be summarised as follows:

(a) *District of Adur*

- Plot 19 - Acquisition of rights in respect of drainage and drainage pipes in approximately 9,920.57 square metres of agricultural land comprising land on the south side of Upper Brighton Road, Sompting, Lancing owned by the Secretary of State for Transport.

(b) *Borough of Worthing*

- Plot 22 - Acquisition of approximately 5,816.4 square metres of highway and subsoil forming part of the A27 known as part of the Sompting Bypass-Upper Brighton Road, Worthing, owned by the Secretary of State for Transport as highway authority for the A27 trunk road.
- Plot 22 - Acquisition of approximately 50.97 square metres of highway and sub-soil being part of the A27 trunk road known as the Sompting Bypass, Upper Brighton Road, Worthing, owned by the Secretary of State for Transport and excluding the interests of the West Sussex County Council.

(c) *District of Horsham*

- Plot 47 - Acquisition of rights to lay and maintain an electric cable in approximately 25,665.24 square metres of agricultural land comprising land forming part of New Erringham Farm, Shoreham by the Sea, owned by the Secretary of State for Defence.
- Plot 48 - Acquisition of rights to lay and maintain an electric cable in approximately 27,433.37 square metres of agricultural land comprising land at Southwick and Upper Breeding, owned by the Secretary of State for Defence.
- Plot 49 - Acquisition of rights to lay and maintain an electric cable in approximately 8,609.93 square metres of agricultural land comprising land lying to the East of Henfield Road, Shoreham by Sea, owned by the Secretary of State for Defence.
- Plot 50 - Acquisition of rights to lay and maintain an electric cable in approximately 705.86 square metres of highway and subsoil forming part of Mill Hill, Shoreham by Sea, owned by the Secretary of State for Defence, excluding the interest of West Sussex County Council as highways authority.
- Plot 51 - Acquisition of rights to lay and maintain a water pipe in approximately 47,932.59 square metres of agricultural land comprising land at Tottington Mount, Upper Beeding, Sneyd, owned by the Secretary of State for Defence.
- Plot 52 - Acquisition of rights to lay and maintain a water pipe in approximately 4,802.75 square metres of agricultural land comprising land at Downlands, Henfield Road, Small Dole, Henfield, owned by the Secretary of State for Defence.

7.14 During the examination evidence provided by the applicant's property agents at the CA hearing held on 27 November 2013

(HR-065 to HR-067) suggested that difficulty had arisen from uncertainties within the Department of Defence as to whether any of the plots proposed for acquisition of land or rights in the BoR related to land or property rights under their control on behalf of the Crown.

- 7.15 Close to the end of the examination the applicant indicated that it had been confirmed by the Ministry of Defence (MoD) that none of the interests in Plots 47-51 and 53 are now owned by the Department. Accordingly no MoD Crown interests are identified in the BoR and Land Plan for compulsory acquisition.
- 7.16 The Department for Transport's (DfT) interests in plots 19, 22 and 23 are retained in the final version of the Book of Reference (Revision 4, REP-606 to REP-614) and appear to be owned by the Secretary of State for Transport as identified in the BoR. No comments by the Department for Transport have been submitted to the ExA regarding the proposed compulsory acquisition of land owned by the Secretary of State for Transport, either to agree with the proposed acquisition or to object to it.
- 7.17 At the CA hearing held on 27 November 2013, in view of the risk of delay to determination of the application in the absence of written confirmation from the Highways Agency and Ministry of Defence, the ExA offered to write directly to those bodies to seek clarification of their respective positions. However the applicant's property witness provided an assurance that these matters were in hand and that matters were progressing through the necessary channels at management level in the departments concerned.
- 7.18 The applicant did not supply documentary evidence before the close of the examination that the Department of Transport had provided written agreement to the compulsory purchase of the relevant Crown interests in Plots 19, 22 and 23, although the applicant's surveyor and valuer did express confidence at the CA ISH held on 27 November 2013 that consent was likely to be forthcoming (HR-065 to HR-067).
- 7.19 It must be emphasised that this matter is both relevant and important to the determination of the application, since s135 of the PA2008 as amended is applicable. S135(2) specifies that:
- '(2) An order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.'*
- 7.20 It should also be noted here that Article 13 of the recommended Order would preclude compulsory acquisition of rights in the Plots concerned unless written consent of the relevant Government department(s) was secured. Article 13 of the recommended Order provides that:

'nothing in the Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the Undertaker -

(a) to take, use, enter upon or in any manner interfere with any land or rights of any description (...)... (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department, or

(b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).'

- 7.21 Without either a compulsory or voluntary acquisition of the relevant rights in Crown Land the applicant would be unable to demonstrate that it could complete the cable corridor works. As a consequence it would also be unable to demonstrate that it could secure a connection to the national electrical grid to enable electricity to be exported from the proposed wind farm to the National Grid. On that basis the need for the project as a whole could not be demonstrated.
- 7.22 Given the agreement reached in the Statement of Common Ground between the applicant and the SDNPA (REP-228) that 'major' or 'major-moderate' adverse effects would be caused to the South Downs National Park, if no need for the project could be demonstrated then in the ExA's judgement the balance would fall in favour of refusal of the application.
- 7.23 In the light of these points the SoS may wish to establish with the Secretary of State for Transport and the applicant whether written consent to compulsory acquisition of the relevant rights in the plots of Crown Land identified in the BoR is available prior to determining whether to make the recommended Order. Because the latest information available to the ExA from the applicant at the end of the examination suggested that consent was likely to be forthcoming the recommendation is made on that basis.
- 7.24 In this context it should be noted that Article 15 of the recommended Order makes provision for street works to be undertaken. While the Highways Agency on behalf of the Secretary of State for Transport has objected to the wording of the provision, no indication was offered that consent is likely to be made available under other consenting procedures, including a licence under the Street Works Act, that would allow construction of a continuous cable corridor across the plots in DfT control. In the absence of a clear written indication from the department that such works are likely to be consented (subject to submission of appropriate detailed information for approval), the recommended

Order retains Article 15 in order to ensure that the project could be constructed as proposed should the SoS decide to make the Order.

Interests of Statutory Undertakers

7.25 At an early stage in the examination it was established that the interests of four statutory undertakers may be affected by the Rampion project proposals. The statutory undertakers concerned are:

- Network Rail Infrastructure Ltd (NRIL)
- National Grid Electricity Transmission PLC (NGET)
- UK Power Networks Operations Ltd (South Eastern Power Networks PLC) (UKPN/SEPN)
- Southern Water Services Ltd (SWS)

7.26 The details of the interests are set out in the Book of Reference. In summary, the interests of NGET in land adjoining its existing substation near Bolney would be affected by the acquisition of freehold interests and rights in land associated with the proposed new Rampion onshore substation and associated permanent and temporary works. The interests of the other utilities would be affected by the compulsory acquisition of land and rights associated with the construction of the proposed export cable corridor.

Modifications proposed to existing compulsory purchase legislation

7.27 At Article 27 the Order includes proposed modifications to the Compulsory Purchase (Vesting Declarations) Act 1982. These modifications are considered at paragraph 7.234 in chapter 7.

The Requirements of the Planning Act 2008

7.28 Compulsory acquisition powers can only be granted if the conditions set out in sections 122 and 123 of the PA2008 are met.

7.29 Section 122 (2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.

7.30 Section 122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, compulsory acquisition must be justified in its own right. But this does not

mean that the compulsory acquisition proposal can be considered in isolation from the wide consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.

- 7.31 Section 123 requires that one of three conditions is met by the proposal⁵². The Panel is satisfied that the condition in s123(2) is met because the application for the DCO includes a request for compulsory acquisition of the land to be authorised.
- 7.32 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision makers:
- all reasonable alternatives to compulsory acquisition must be explored;
 - the applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and
 - the decision maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

The Panel therefore investigated these points through a combination of written and oral questioning.

How the ExA examined the case for compulsory acquisition and other property-related measures

- 7.33 After Acceptance of the Rampion development consent order application relevant representations were submitted by the interested parties (including statutory parties) who had identified themselves or who had otherwise been identified by the Planning Inspectorate in accordance with the Infrastructure Planning (Examination Procedure) Rules 2010. A Preliminary Meeting was held by the Panel on 17th July 2013 and accordingly the examination commenced on 18th July 2013.
- 7.34 Objections to the compulsory acquisition element of the proposals were raised by GlaxoSmithKline plc (GSK) and by the four statutory undertakers listed at paragraph 7.25 above. In the light of representations of objection submitted by the four statutory undertakers, and in the absence of agreement over protective

⁵² (1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that one of the conditions in subsections (2) to (4) is met.
(2) The condition is that the application for the order included a request for compulsory acquisition of the land to be authorised.
(3) The condition is that all persons with an interest in the land consent to the inclusion of the provision.
(4) The condition is that the prescribed procedure has been followed in relation to the land.

provisions for inclusion in the submitted draft Order, the Panel sought to establish clarity regarding the position in relation to the interests and apparatus of these undertakers. In response to the representations submitted by the statutory undertakers and to resultant queries raised by the Panel, the applicant submitted four applications for certificates to be issued under s127 of the PA2008 - those relating to the interests of NGET and UKPN/SEPN to be determined by the Secretary of State for Energy and Climate Change, that relating to the interests of Southern Water to be determined by the Secretary of State for the Environment, Food and Rural Affairs and that relating to the interests of NRIL to be determined by the Secretary of State for Transport.

- 7.35 S127 of the PA2008 applies in relation to statutory undertakers' land where:
- the land has been acquired by the relevant undertaker for the purposes of its undertaking;
 - a representation has been made about a DCO application before completion of the examination and that representation has not been withdrawn and
 - as a result of the representation the Secretary of State (SoS) must be satisfied that the land is used for the purposes of carrying on the statutory undertakers' undertaking, or an interest in the land is held for these purposes, before compulsory acquisition of land or rights in statutory undertakers' land may be authorised.
- 7.36 Recent legislative changes made to the PA2008 by the Growth and Infrastructure Act 2013 consolidated the examination of s127 matters into the wider DCO examination process. However, the Rampion DCO application was submitted before that change. Separate applications were therefore required to establish whether the proposed acquisition measures meet the tests set out in s127 of the Act, ie those in sub-sections (2) and (3) in the case of acquisition of land and those in sub-sections (5) and (6) in the case of acquisition of rights over land.
- 7.37 A DCO granting development consent may authorise the CA of statutory undertakers' land only to the extent that the SoS is satisfied that it 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. Likewise, an order granting development consent may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right only to the extent that the right can be purchased without serious detriment to the carrying on of the undertaking, or if 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.

- 7.38 A member of the Rampion Examining authority Panel (Glyn Roberts) was appointed by the Secretary of State for Communities and Local Government to act as independent examiner of the four s127 applications. Under the legislative framework then in force, the s127 application examinations were to be run separately and parallel to the Rampion DCO examination. It should be noted, however, that the examination procedures and timetables for all these separate application, ie the DCO application and the four s127 applications, were carefully coordinated due to the close relationship between them.
- 7.39 The ExA exhorted the applicant and statutory undertakers to make early progress towards resolution of protective provisions for inclusion in the Order to enable the statutory undertakers' representations and s127 applications to be withdrawn if practicable before the close of the DCO examination. To that end the Panel posed a number of written and oral questions and sought regular updates regarding progress in the negotiations between the relevant parties.
- 7.40 Towards the end of the Rampion DCO examination agreement was reached between all four undertakers and the applicant regarding protective provisions to be included in Schedule 12 to the Order. The undertakers' representations were withdrawn as a result of this agreement and the relevant provisions are included without proposed modification in the recommended draft Order. There is therefore no need for certificates to be issued under s127 by the relevant Secretaries of State.
- 7.41 The fact that agreement was reached between the parties as to the protective provisions for inclusion in Schedule 12 to the Order led to withdrawal of the s127 applications. Based upon the information before us, the Panel is unaware of any reasons why the protective provisions agreed between the applicant and the relevant statutory undertakers may be inadequate or otherwise unacceptable.
- 7.42 Withdrawal of the undertakers' representations and the applicant's related s127 applications is clearly a matter that is relevant and important to the Rampion project DCO examination. However, bearing in mind that the DCO examination is completely separate to the s127 examinations, agreement between the parties and withdrawal of the s127 applications does not absolve the DCO examination Panel of its responsibility to scrutinise the content of the DCO documentation including the relevant CA provisions and the protective provisions included in Schedule 12. The CA provisions are considered below.

- 7.43 A further objection was lodged at the Compulsory Acquisition hearing by Mr Charles Worsley, an owner of agricultural land affected by the proposed acquisition of freehold land related to the siting of the proposed new Rampion onshore substation in the parish of Twineham, near Bolney (REP-042).
- 7.44 No objections to compulsory acquisition of Crown land were lodged by Crown interests. Some initial concerns raised by the National Trust (NT) were not pursued following clarification by the applicant. No acquisition of the NT's inalienable interest is proposed.
- 7.45 Interested parties who did not fall into the category of an 'Affected Person' as defined by the Infrastructure Planning (Examination Procedure) Rules 2010, Ms Pat Berry and Michael Whiting, also objected (REP-436) to the compulsory acquisition of rights in the public open space at Worthing Pleasure Park/Brooklands Park. The position in relation to the objection raised is set out below at paragraph 7.149 et seq.

Timing of key events during the examination of compulsory acquisition and related matters

- 7.46 The Panel invited submission of written representations, asked its first round of written questions and also invited the submission of statements of common ground on 25 July 2013 for response by deadline II (15 August 2013). The parties were also asked to indicate by that date any wish to make an oral submission at a compulsory acquisition hearing. Responses were received from NGET and GSK indicating that they wished to speak at the CA hearing scheduled for 27 November 2013.
- 7.47 The s127 applications in relation to the interests of the four statutory undertakers were submitted by the applicant on 31 July 2013
- 7.48 Negotiations were undertaken by the applicant with all the landowners whose land would be affected by the compulsory acquisition and temporary possession provisions of the Order. At the CA hearing held on 27 November 2013 chartered surveyors acting for the applicant confirmed that agreement had been reached in the substantial majority of the negotiations and that it was hoped that most would be confirmed before close of the examination. A SoCG was agreed between the applicant and NGET (S127-067). The final version of the full BoR (version 4, REP-606 to REP-614) was subject to minor modification in January 2014 in order to reflect the exclusion of any reference to MoD ownership from the BoR.
- 7.49 NRIL, SEPN and NGET and SWSL also sought appropriate protective provisions in relation to their interests.

- 7.50 The applicant submitted draft protective provisions in respect of gas pipeline owners, pipeline owners and sewerage undertakers in December 2013. GSK responded to the Panel's Rule 17 request for the deadline of 8 January 2014 (REP-625), suggesting significant amendments to the applicant's protective provisions, which they considered to be unsatisfactory in a number of respects.
- 7.51 In due course the form of a potential crossing agreement was agreed in negotiations between the applicant and GSK. The applicant's final position was confirmed in a letter from its solicitors, Bond Dickenson, dated 17 January 2014 (REP-632):

'The Applicant can confirm that agreement has been reached with GSK on the form of Crossing Agreement to be entered into by the parties. The Crossing Agreement is currently being engrossed for execution by the parties and it is anticipated that it will be completed by 31 January 2014, if not before. Once the Crossing Agreement has been executed and completed, GSK has agreed to withdraw all representations on the application.'

GSK will maintain its position on the protective provisions, and will only withdraw its amendments to the protective provisions and be content to rely on the Applicant's version of the protective provisions once completion has taken place. The Applicant confirms that it will inform the Secretary of State once the Crossing Agreement has completed.

We confirm that a draft of this letter has been approved by the solicitors acting for GSK and they agree with its contents. You will see that we have copied this letter to the solicitors for GSK so that they may confirm this to you.'

- 7.52 An email from GSK's planning consultants Nathaniel Lichfield & Partners also dated 17 January 2013 (REP-645) confirmed GSK's agreement with the applicant's position.
- 7.53 The pipeline crossing agreement relating to the two GSK pipelines would be a private side agreement between GSK and the applicant. This was not submitted to the examination and its detail cannot therefore be considered in this report.
- 7.54 Protective provisions were also agreed between the applicant and all four statutory undertakers. As a result the representations by the relevant statutory undertakers and the s127 applications by the applicant were all withdrawn at various dates between 5 December 2013 and 8 January 2014. The Panel has scrutinised the protective provisions agreed between the four statutory undertakers and the applicant from a public interest perspective

and, in the light of all the information available to the examination, finds no legal, policy or other reason to disagree with or otherwise to challenge their contents.

- 7.55 A summary of the compulsory acquisition discussions in relation to the interests of Mr Charles Worsley is set out below at paragraph 7.143. The position in relation to the objection by Ms Pat Berry and Mr Michael Whiting is set out at paragraph 7.149 et seq.

The Applicant's general case for compulsory acquisition

- 7.56 The general case put by the applicant in respect of the Compulsory Acquisition elements of the draft Development Consent Order is summarised at Section 2 of its Statement of Reasons. The applicant is seeking to assemble in its ownership the land and associated rights over land included in the draft Order on the basis that the land is required for the project.
- 7.57 Paragraph 5.13 of the applicant's Statement of Reasons (SoR) states that the project could generate more than 2,100 gigawatt hours (GWh) of electricity each year and that in a typical year, it is estimated that the project could generate enough electricity for the domestic needs of the equivalent of 450,000 average UK households.
- 7.58 In relation to the recognised need and policy support for the project the applicant argued (in section 5 of the SoR) that the Project's 700MW of generating capacity would form a key contribution towards meeting the requirement in Article 4 of the EU Renewable Energy Directive, which requires the UK to equal or exceed 15% of gross final consumption of energy from renewable sources by 2020. It would also thereby support delivery of the UK Government target to achieve 30% of electricity generation from renewable sources by 2020. It was further argued that the Project responds directly to the urgent need to decarbonise the UK energy supply. Part 1 of the Climate Change Act 2008 sets out a duty to reduce UK greenhouse gas emissions to at least 80% below 1990 levels by 2050. In addition the applicant contended that the Project would help to enhance the UK's energy security and meet the need for diversity of supply identified in the Government's statements of national policy in NPSs EN-1 and EN-5.
- 7.59 The SoR indicates that the applicant has sought to purchase the necessary land interests by agreement and has already secured a substantial element of the land and interests required for delivery of the project. At the date of submission of the application around 80% of the Order Land or interests in land whose acquisition is considered necessary by the applicant were subject to agreement to acquire, both in terms of route distance and number of owners affected (Paragraph 2.3 of the SoR). Some additional voluntary acquisition agreements were secured during the course of the examination.

7.60 The SoR is clear (eg at paragraph 7.62) that where agreement has been reached with a party its interest would not be the subject of compulsory acquisition unless at that time the relevant party was unable to fulfil its contractual obligations to grant an interest to the applicant. The relevant land remains in the Book of Reference to enable the applicant to override, suspend or extinguish any minor or other third party interests that may subsist in those lands. The applicant argued that without such provision there could be interests that the landowners might not be able to deal with, and if the applicant could not take the Order land free of such rights that it might be possible that the beneficiaries of those rights could delay or even restrict the implementation of the Project (SoR paragraphs 4.5-4.7).

7.61 Paragraph 7.2 of the SoR indicates that all of the Order Land is required either for the purposes of the project, or to facilitate it, or for purposes incidental thereto. In order to deliver the Project, the applicant is seeking the acquisition of a combination of freehold ownership and permanent rights (such as rights of cable installation and subsequent access and restrictive covenants to protect the installed cables from being excavated or built over) and temporary possession and use powers, which it is also seeking for most plots over which rights are sought.

The Applicant's case for acquisition of specific parcels of land

7.62 The land interests proposed for compulsory acquisition that the applicant contends are essential to enable Project delivery are as follows:

- *Freehold interests* - for the purposes of constructing and maintaining the substation compound. The applicant indicates at paragraph 7.3.1 of the SoR that these areas are limited to the land required for the construction and operation of the new substation at Bolney (Plots 90-95).
- *Permanent rights* - to install underground cables for the Project and to facilitate access for installation and for maintenance of the onshore infrastructure and associated works proposed. This acquisition represents the majority of the acquisition proposed for the principal part of the Order Land, comprising the onshore cable route and associated rights of access for construction and maintenance purposes. The applicant explains at paragraph 7.3.2 of the SoR that it is anticipated that the process to secure permanent rights compulsorily will commence only after temporary possession has first been taken of the surface of the Order land. The rights proposed in relation to each of the relevant plots are described in Schedule 7 to the Order. They include rights to install the cables and to maintain them together with rights of access. In certain plots restrictive covenants to protect the installed cables are also sought.

- *Temporary possession only* - for the purposes of construction laydown areas to accommodate site offices, welfare facilities and plant and equipment storage. Possession is required during the construction of the Project only. Article 31(4) requires the removal of temporary works and restoration of the land to the reasonable satisfaction of the owners of the land. While the undertaker would not be required under the terms of this article to replace a building, there is no indication or suggestion that any buildings would be removed. The lands that may be subject to powers of temporary possession are described in Schedule 9 of the Order.

7.63 The applicant's description of the specific Plots of land (or rights in land related to specified Plots) proposed to be acquired compulsorily and its justification for these acquisitions is set out at paragraph 7.16-7.59 of the SoR. Its explanation of negotiations with affected parties is set out at paragraphs 7.60-7.64 of the SoR. Other than the representations from the four statutory undertakers (NRIL, NGET, SEPN and SWSL), the principal substantive objections submitted to the examination in relation to the compulsory acquisition elements of the proposal were received from GlaxoSmithKline (GSK) (in particular in respect of the acquisition of rights in Plots 2, 10 and 11), the National Trust (in respect of the acquisition of rights in Plot 46 to the south of Tottington Mount in the South Downs National Park), Mr Charles Worsley (particularly in respect of the implications arising from the proposed acquisition of the freehold interest in Plot 92) and an objection from an interested party to the acquisition of rights in unspecified plots in Brooklands Pleasure Park, Worthing. The latter was lodged by Ms Pat Berry and Mr Michael Whiting, who were not registered as interested parties recognised under the Infrastructure Planning (Examination Procedure) Rules 2010 as an 'Affected Persons'.

Applicant's case regarding possible alternatives to compulsory acquisition

7.64 The applicant sets out at paragraphs 7.71 to 7.73 of its Statement of Reasons (SoR) the approach that it has adopted to exploration of alternatives to compulsory acquisition. It argues that it had sought, and continued to seek, a negotiated solution to each of the identified required interests in Part 1 of the Book of Reference and that in each case the applicant had chosen to secure land or rights in a way that minimises disruption to the relevant owners.

7.65 The rationale for selection of the landfall, a onshore cable corridor and substation locations is set out in detail in Section 3 of the applicant's ES. The applicant argues that in the light of the choice of route, the inclusion within the compulsory acquisition provisions of the Order of the land scheduled in the BoR is necessary and appropriate and that there are no other suitable alternatives.

7.66 Where land is in unknown ownership and so scheduled in the BoR, the applicant has not been able to identify the relevant holder of that interest following a process of due diligence involving Land Registry searches and other enquiries. The applicant explains at paragraph 7.73 of the SoR that: *'All identified owners of interests have been approached and where possible agreement has been reached. Negotiations will continue, but the applicant believes compulsory acquisition powers can now be justified to ensure that the Project can be developed within a reasonably commercial timescale.'*

Purposes of the proposed compulsory acquisition and justification for it in relation to s122 of the PA 2008

7.67 The applicant's case under s122 is set out at Section 7 of its SoR. A summary of the interests proposed to be purchased is set out at paragraph 7.62 above. The applicant indicates at paragraph 7.2 of the SoR that: *'All of the Order Land, shown on the Land Plan, is required either for the purposes of the Project, or to facilitate it, or for purposes incidental thereto.'*

7.68 The principal purposes identified by the applicant relate to the need to facilitate delivery and operational maintenance of the onshore cable corridor and to construct and maintain the proposed onshore electricity substation near Bolney. In connection with the onshore cable corridor rights are sought to install cables in a corridor within the Order limits of a width of 40 metres, except where HDD is proposed. In the latter locations a wider corridor is sought.

7.69 The applicant indicates at paragraph 7.4 of the SoR that:

'The permanent cable easement is anticipated in most cases to be approximately 15 metres in width within the Limits of Land to be Acquired or Used (LLAU), save for where an obstruction is met requiring a wider width. The anticipated working space for construction will wherever possible be not more than 30 metres in width. The additional 10 metres in cross section for the LLAU are required to enable the Applicant to carry out the cable installation works with the minimum of inconvenience to affected landowners, and by allowing for minor variances to the cable corridor to avoid potential engineering difficulties or to otherwise enable the construction of the Project in the stated timeframe and with the minimum of disruption to landowners and the wider community.'

7.70 At paragraph 7.5 of the SoR the applicant adds that:

'7.5 The additional 10 metres are also required to ensure that there is sufficient space within the cable corridor for the following:

7.5.1 Visibility splays and turning space at highway crossings;

7.5.2 *Temporary alterations to accesses and works to drainage systems and other conduits;*

7.5.3 *Habitats surveys, mitigation and impact avoidance;*

7.5.4 *Avoiding unknown or abandoned statutory undertakers' equipment, field drains and other local infrastructure works;*

7.5.5 *Areas, where appropriate, for footpath diversions or temporary access routes;*

7.5.6 *Avoiding difficult subsurface structures that are otherwise yet unknown including rock structures, boulders, difficult soil traps or archaeological remains;*

7.5.7 *Avoiding tree roots or avoiding the removal of trees and hedgerows; and*

7.5.8 *Avoiding localised area prone to flooding or badly drained areas.'*

- 7.71 The SoR confirms that the detailed alignment of the route will be determined following ground investigations and that the exact location of the cables will be the subject of further discussion with affected landowners and following additional surveys and ground investigations prior to the commencement of laying the cables (Paragraph 7.6 of the SoR).
- 7.72 The proposed 15 metre permanent corridor is justified on the basis that all twelve cables will be laid within this permanent corridor, with appropriate ducting and associated works within the permanent easement, together with a right of surface access for occasional maintenance. The applicant suggests that this permanent acquisition is *'directly comparable, in terms of its width, with other similar schemes'* (paragraph 7.7 of the SoR). The Statement confirms that the additional area over and above 15 metres is needed for temporary working space for the reasons outlined above.
- 7.73 Where it would not be possible to install cables in open trenches the applicant proposes to use trenchless HDD techniques. Large scale HDD operations greater than 400m in length would be employed at the following locations:
- Landfall/A259
 - Railway line (south of A27)
 - Sompting By-Pass (A27)
 - River Adur/A283.
- 7.74 For large-scale HDD, the applicant envisages a typical working area of approximately 50m x 50m or variations of these dimensions to achieve a practical 2500m² area, in order to accommodate the HDD rig as well as ancillary equipment, offices,

working facilities and storage of drilling fluid, water and drill pipes. At the exit side of each crossing an area of approximately 50m x 50m would be required to accommodate the exit pit, mud storage tanks or mud storage lagoon. Both entry and exit sites would require a duct stringing area of approximately 25m wide long enough to accommodate the full length of duct being pulled through the drilled hole.

- 7.75 It is also indicated that small scale drilling (less than 50m in length) may also be required at minor road, drain or hedge crossings. Small scale drilling could be carried out within the proposed 40m working width.
- 7.76 In relation to the areas of land or rights in land required to be compulsorily acquired the applicant argues at paragraph 7.13 of the SoR (APP-031) that: *'Overall, the 40 metre cable corridor width represents a clear, justifiable, proportionate and reasonable approach to compulsory acquisition whilst allowing for delivery of the Project in a timely manner.'*

Acquisition of restrictive covenants

- 7.77 The applicant seeks to acquire restrictive covenants over Plots 11, 13, 14, 15-19, 21, 24, 25-27, 29-32, 34, 35, 42, 43-45, 47-49, 51-54, 57, 58, 60-63, 65-67, 69, 70, 72-80, 83, 85-87 and 89 within the Order Lands, as indicated in Schedule 7 to the Order. The range of purposes for which the restrictive covenants are sought are as set out in the example of the GSK plots described in Schedule 7 to the Order. They comprise covenants for the benefit of the onshore substation and the remainder of the Order Land to prevent the use of the relevant parts of the Order Land by way of erection of new buildings, provision of hard surfacing that would make access to the cables more difficult or to prevent excavation (save for agricultural purposes). Rights are also sought to prevent the planting or growing of major trees or shrubs that might cause damage to the cables. These covenants are sought only over the area of the permanent easement acquisition and not for the full extent of the Order limits along the cable corridor as they are sought only to protect the cables once installed. The applicant has indicated that the covenants will not be sought over any Order Land where agreement with the relevant landowner can be relied on by the applicant.
- 7.78 The applicant argues that such rights have been sought only where appropriate to protect the cables once installed so that the supply of electricity from the Rampion NSIP is not adversely impacted and the health and safety of those using the Order Land are protected by way of the legal rights to be secured over the relevant Order Land. The applicant believes that the imposition of restrictive covenants is also proportionate (Paragraph 7.15 of the SoR).

Applicant's case as to Availability and Adequacy of Funds

- 7.79 The applicant's case in relation to the availability and adequacy of funds to implement the project as a whole and (as part of that implementation) to cover any costs arising from compulsory acquisition and injurious affection claims, is set out at paragraphs 7.74 - 7.82 of the SoR. The applicant (E.ON Climate and Renewables UK Rampion Offshore Wind Limited) is a subsidiary of E.ON Climate & Renewables UK Zone 6 Limited, a commercial vehicle that has been created for the purpose of developing Zone 6 of The Crown Estate's third round renewable energy development initiative. In turn E.ON Climate and Renewable UK Zone 6 Limited is part of the E.ON group of companies and is responsible for developing, constructing and operating all of the group's renewable energy projects.
- 7.80 In the UK, E.ON Climate and Renewables' focus is on wind energy (both onshore and offshore) and dedicated biomass and marine power generation. Currently, E.ON owns and operates 18 onshore and 3 offshore wind farms.
- 7.81 Details of the proposed funding for the implementation of the Project and the acquisition of land are contained in the Funding Statement (Document 4.2) which accompanies the application. A key part of the applicant's case in support of the application as a whole and of the compulsory acquisition element in particular is that through its parent company, E.ON UK PLC, it has the ability to procure the financial resources necessary to fund the works to be authorised by the Order, subject to final Board authority. The applicant contends that these funds will meet the capital expenditure for:
- the cost of acquiring the land identified in the Order; and
 - the cost of compensation otherwise payable in accordance with the Order.
- 7.82 On 7 December 2012 the applicant and E.ON UK PLC entered into a Parent Company Guarantee (PCG) agreement attached to the Funding Statement. The agreement includes a guarantee by E.ON UK PLC to make the payments of agreed or awarded compensation direct to the relevant claimant if the applicant has not done so. The objective of the guarantee would be to pay compensation for any expropriation, blight, injurious affection and claims under Part 1 of the Land Compensation Act 1973 (the 1973 Act), if such claims were to be valid and appropriately made. Paragraph 7.81 of the applicant's SoR makes it clear that the applicant does not anticipate that any claims under the 1973 Act nor for blight will arise.
- 7.83 The applicant's SoR states that, as a result of this mechanism, the Secretary of State can be assured that sufficient funding for payment of compensation will be available to the applicant if

compulsory acquisition powers are provided in the Order being sought.

The Objectors' cases

The interests of the statutory undertakers

- 7.84 The position in relation to the cases of the four statutory undertakers whose interests were subject to s127 applications submitted by the applicant in parallel with the DCO application is set out below. Agreed protective provisions are included at Schedule 12 to the recommended Order.

NRIL Interests

- 7.85 In the case of the Network Rail Infrastructure Ltd (NRIL) interests proposed for acquisition, the applicant proposes to acquire the rights necessary to undertake horizontal directional drilling (HDD) under the Brighton to Worthing railway line in order to insert cabling equipment associated with the relevant circuits together with the relevant export cables under the railway. HDD is a trenchless crossing technique that the applicant is proposing to apply to enable the export cable corridor to cross a number of roads, the River Adur and this section of railway line on its route between the proposed landfall and the proposed Rampion project onshore substation near Bolney.
- 7.86 The NRIL s127 application indicated that the applicant's HDD under the railway would require the use of special equipment in order to install ducting without the need for digging a trench. A typical HDD operation involves drilling a pilot hole from the entry point towards the exit point, reaming to make the hole larger, pulling a duct through the reamed hole and then pulling a cable through the ducting. Drilling fluid would be jetted through the reamer to lubricate during cutting and in order to transport cuttings out of the enlarged hole. The hole would typically be 25-50% larger than the ducting it is intended to carry, to facilitate transport of soil cuttings and allow for soil expansion during pulling. The horizontal drill length was estimated as approximately 400-500m, depending on entry and exit locations. It was suggested that the drilling depth would be resolved at the detailed design stage, following discussions with NRIL regarding its operational requirements.
- 7.87 The plot of NRIL land proposed for acquisition to enable the railway crossing is identified as Plot number NRIL 12 in the Book of Reference and Land Plan. It measures approximately 1634 sq m.
- 7.88 The applicant contended that;
- the HDD works can be undertaken without serious detriment to Network Rail's operations; and that

- the inclusion of appropriate protective provisions in the Order would ensure that Network Rail's interests are properly protected.
- 7.89 NRIL's written submissions (REP-153, S127-049, S127-066) indicated that the company was in negotiation with the applicant and expressed concerns regarding the acquisition of rights in the railway land and potential impact of the works on the railway (together with associated concerns regarding the need to ensure the public safety of the railway). However it was also submitted that the company sought agreement with the applicant.
- 7.90 The Panel undertook unaccompanied site visits which included a visit to the area adjoining the Brighton-Worthing railway in order to understand the implications of this element of the Rampion project proposal. It was evident that in order to maintain the broad route selected after assessment of alternatives in the ES, passing under this section of the railway cannot readily be avoided and that the location selected would minimise the potential effects on adjoining urban areas because it forms part of the 'green wedge' between Brighton and Worthing.
- 7.91 After discussions with the applicant NRIL agreed protective provisions (now included as Part 1 of Schedule 12 in the recommended Order). The Panel agrees with the positions of both parties that these provisions provide adequate protection to NRIL's interests, including the safety of the travelling public using the section of railway concerned.

The Interests of UK Power Networks/South East Power Networks

- 7.92 South East Power Networks, the principal regional electricity distribution company, is a subsidiary of UK Power Networks. The relevant property interests owned by South East Power Networks are widely spread across the cable corridor route due to the layout of the local electricity distribution networks intersected by the proposed route of the Rampion cable corridor. Acquisition along the proposed cable corridor route considered to affect SEPN property rights relates to a large number of plots owned by third party land owners where SEPN may hold existing easements or other rights that may be affected by the proposed creation of new rights. The plots likely to be affected in this way include Plot numbers SEPN 3-6, 13-17, 19-22, 27-31, 34, 43, 47-51, 53, 60-61, 70-71, 73, 76, 78, 83, 85, 86, 87-89, 99-101 as shown in the BoR and Land Plan. SEPN land affected by proposed compulsory acquisition includes Plot numbers SEPN 6, 19-22, 27-31, 34, 43, 47-51, 53, 55, 60-61, 70-71, 73, 76, 78, 82-89, 90-95, 97-98.
- 7.93 The applicant's s127 application in respect of these SEPN interests (S127-026) explained that: *'there may be interference with SEPN's general right of access in connection with the maintenance of SEPN's apparatus along the cable corridor during construction and*

maintenance. However the nature of the works proposed and protective measures included in the Order will mean that the Secretary of State can be confident that interference with SEPN's rights can be without detriment to the carrying on of their undertakings.'

- 7.94 The applicant also indicated in the s127 application related to its proposed CA of SEPN's interests that: the land where SEPN has an interest is required for the purposes of construction installation operation maintenance and decommissioning of up to twelve electricity cables; ducting and jointing bays and other apparatus ancillary to the transmitting of electricity along the cables together with the rights to pass and re-pass with or without vehicles, plant and machinery, retain and use the cables to transmit electricity, install marker posts to identify the location of cables; fell or coppice trees, hedges or shrubs, install, use, maintain or repair drainage; install, alter, maintain, protect or remove pipes, cables or conduits or apparatus of SEPN and remove fences during construction, maintenance repair or renewal.
- 7.95 The SEPN submission (REP-416) and a related s127 application submission (S127-050) expressed concerns regarding the implications of the proposed compulsory acquisition and works for the safeguarding of its distribution network and electrical energy distribution services to its extensive customer base in the region.
- 7.96 Following negotiations with the applicant, the SEPN representation was withdrawn (S127-073) following agreement of relevant Protective Provisions that are now included in the recommended draft Order at Part 3 of Schedule 12. The Panel has reviewed these provisions in relation to the public interest in those parts of the sub-regional electricity distribution network that may be affected. It is considered that the terms of the protective provisions provide adequate safeguards not only to SEPN as a commercial undertaking but to the operation of that undertaking in the wider public interest.

The Interests of NGET

- 7.97 The applicant's SoR explains that the relevant interests of National Grid Electricity Transmission Ltd relate to the property rights and apparatus adjoining NGET's large existing substation located south of Bolney in the parish of Twineham. The acquisition of land and property rights in this location is proposed to facilitate construction, maintenance and operation of the substation and connection between the Rampion export cables and the national grid.
- 7.98 The NGET land and rights proposed for acquisition by the applicant divides into 3 categories:

- The new substation compound near Bolney, Mid-Sussex, which is proposed to be located on land owned by NGET (Plot NGET 94). The applicant seeks to acquire the freehold of this land from NGET.
- The easement to connect the Project to the NGET substation (Plots NGET 98, 100 and 101). NGET holds the freehold of part of this land.
- Lands held by other parties, in which NGET has apparatus. (Plots NGET 87, 92, 93, 95 and 97).

(d) The Freehold land (Plot NGET 94)

7.99 A new onshore substation for the Project is proposed adjacent to the existing NGET substation near Bolney. The area of the proposed substation (including the temporary and mitigation land) is 0.3 km². The land is currently farmed and the subject of an Agricultural Holdings Act Tenancy. It is not currently used for NGET's operational purposes, save for overhead cables that traverse the site.

(e) The Easement Land (Plots NGET 98, 100 and 101)

7.100 The applicant's SoR indicates that in order to install the cables connecting the Applicant's substation to the existing NGET substation near Bolney rights are required over NGET's land. The installation of the cables is governed by way of a connection agreement between the parties. However rights in land are required from NGET to effect the connection. These relate to plots 100 and 101. The land is currently farmed and the subject of an Agricultural Holdings Act Tenancy. The SoR indicates that it is not currently used for NGET's operational purposes, save for overhead cables that traverse the site.

7.101 Rights of access are required over plot 98, a strip of land next to Wineham Lane subject to a lease in favour of NGET expiring at the end of 2014. The SoR indicates that the applicant does not believe that this land is used for NGET's operational purposes.

(f) The Crossing land (Plots NGET 87, 92, 93, 95 and 97)

7.102 NGET has overhead cables in plots 87, 92, 93, 95 and 97. These lands are in agricultural use. The applicant has put forward no proposals to alter that apparatus.

7.103 NGET's submissions accepted that provision should be made for the Rampion project to be connected to the national grid to enable the electricity generated by the project to contribute to meeting the need for electrical energy. However NGET submitted that it was concerned regarding the practical arrangements for making the connection and that it wished to safeguard the potential for enhancement to its existing Bolney substation facilities, including provision for a new international connector to Belgium.

Accordingly the company entered into negotiations with the applicant in order to secure satisfactory protective provisions. It is also understood that a commercially confidential side agreement was negotiated.

- 7.104 In addition to the commercial interest of NGET as an undertaker, the Panel considered the question of the wider public interest in the services provided by NGET. Having regard to all the information submitted by the applicant and by the four undertakers, including the agreed protective provisions, the Panel considers that not only are the relevant private commercial interests of NGET safeguarded through the proposed Protective Provisions but the key functions of the undertaking that are in the wider public interest are also adequately safeguarded by the agreed provisions now included into the recommended draft Order at Schedule 12.
- 7.105 On the basis of the information submitted to the examination together with the Panel's accompanied and unaccompanied site visits - and subject to the protective provisions included in the recommended draft Order at Schedule 12 - the acquisition of the freehold land at Plot numbers 99-101 for the purpose of constructing, operating and maintaining the proposed new substation without replacement of that land could be undertaken without serious detriment to the NGET commercial undertaking. It could also be undertaken whilst maintaining the broad level of public service delivered by the NGET infrastructure at Bolney.
- 7.106 On the basis of the same information the acquisition of rights in land in which NGET has an interest as proposed under the draft Order for the purposes set out in the Statement of Reasons could also be secured without serious detriment to either the undertaker's commercial interest or the wider public interest in the service delivered by NGET's Bolney infrastructure. This is because the terms of the protective provisions ensure adequate safeguards

SWS Interests

- 7.107 The interests of Southern Water Services Ltd that are proposed to be affected by the compulsory acquisition provisions proposed in the Rampion DCO relate to:
- easements or other rights along the cable corridor that might be affected by the Order's proposed creation of new rights in Plot numbers SWSL 6, 7, 9, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 26, 49, 57, 60, 68, 71, 73; and
 - land of which temporary possession is proposed - Plot numbers SWSL 4, 5, 6, 7, 9, 10, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 26, 49, 55, 56, 57, 60, 68, 71, 73.
- 7.108 The applicant's s127 application in relation to SWS's interests (S.127-024) confirmed that:

- *'There may be interference with SWSL's general rights of access in connection with maintenance of SWSL's apparatus along the cable corridor during construction and maintenance. However the nature of the works proposed and inclusion of protective measures in the Order will mean that the Secretary of State can be confident that interference with SWSL's rights can be without due detriment to the carrying on of their undertakings.*
- *The land where SWSL has an interest at plots 4-7, 9, 10, 12-15, 19-24, 26, 49, 55-57, 60, 68, 71 and 73 is required to be temporarily possessed for the purpose of construction and carrying out of the authorised project; worksites for construction and carrying out of the authorised project; access for carrying out the authorised project; construction compound and laying of temporary haul roads and improvements to tracks.'*

- 7.109 In its Statement of Case for the s127 application the DCO applicant indicated that Plots affected by the Rampion DCO proposals were where SWS held rights in land owned by third parties, where SWS enjoys rights or where apparatus owned by SWS is located. In particular SWS has rights in SWS Plots 26, 49, 55-57, 60 and 68; and SWS has rights and owns apparatus located in SWSL Plots 4-6, 7, 9-15, 19-24, 71 and 73.
- 7.110 In its submissions SWS indicated that it was in discussion with the applicant regarding draft protective provisions and a side agreement. SWS considered that protective provisions are necessary to enable that company to fulfil its statutory functions and to ensure that land and interests in land are not acquired without SWS agreement, that apparatus is not removed unless alternative apparatus satisfactory to SWS is first provided, that appropriate precautions are taken to prevent damage to apparatus during construction of the proposed development and that access rights to apparatus and to East Worthing WTW will be maintained at all times. It was SWSL's position that if protective provisions could not be agreed the grant of compulsory purchase powers would be contrary to the public interest due to the serious detriment which would be caused to SWS's operational undertaking.
- 7.111 East Worthing Wastewater Treatment Works (WTW) is located in the gap between Worthing and Lancing, just to the west of the Brooklands Pleasure Park as shown in Appendix AA to the SWS Statement of Case in relation to the relevant s127 application. The treatment works receives sewage flows from Worthing, Lancing and Findon. The WTW uses mechanical and biological processes to treat the sewage. It then pumps this cleaned final effluent several kilometres out to sea. The statement points out that WTW provides a vital public service to the population of East Worthing processing, wastewater from houses and industries 24 hours a day. Due to the topographic profile in East Worthing, sewers arrive

at the WTW at a deep level. SWSL argued that if the WTW cannot operate, there is no bypass possible for the sewage, which would result in flooding in the catchment in the event of a prolonged service interruption, or a service interruption that coincided with a storm event.

7.112 There are a number of key items of SWS apparatus affected by the Order and these are identified on drawings 'Extent of Land subject to DCO' shown on E-ON drawing 'Rampion Offshore Wind Farm Section 127 Application In respect of Assets owned by SWS Sheets 1 to 4' (S127-029 to S127-032) - see SWS Appendices A, B,C and D. Within this list of apparatus, five critical elements were identified:

(a) Railway Crossing

7.113 Two gravity-feed sewers of 600mm and 525mm diameter are fed into a combined pipe of unknown diameter and depth to pass under the Brighton-Worthing railway. SWS was concerned regarding the risks posed to these sewer pipes (and in particular the risk of any damage being caused to the combined pipe, with consequential risk of sewage flooding into residential properties in the neighbourhood). The potential risks giving rise to this concern arose from the proposed horizontal directional drilling operation under the railway associated with delivery of the Rampion export cable corridor, which is proposed to be located near to the railway crossing point for the sewer pipe, and for which no detailed siting or design information had been made available by the applicant. SWSL was also concerned to maintain access to the relevant sewer pipes so that gravity flows to the Sewage Water Treatment Plant can be maintained.

(b) Treated Effluent Outfall

7.114 The SWS statement indicates that an onshore section of the Treated Effluent Outfall consists of a 1200mm pumped effluent outfall pipeline, which crosses under the public golf course associated with Worthing Pleasure Park, passes under the surface car park serving the golf course and park and under the A259 highway and across the beach to extend several hundred metres out to sea. SWS's statement of case confirms that this is the main outfall pipe from the treatment works and that it operates 24 hours per day. The outfall is subject to requirements in the relevant EA operating licence to discharge. SWS is therefore concerned to retain maintenance access to the outfall pipe at all times. It was also argued that during construction for E-ON's cables it would be essential to determine the depth of the outfall pipeline to ensure it is not affected by the construction. The possible consequence of failure of the treated effluent pipeline would be discharge to a short sea outfall. If the failure occurred in a large storm event, when the short sea outfall capacity would be

needed, then the excess flows would back up into the network, causing local sewage flooding.

- 7.115 SWS argued that the treated effluent pipeline is essential to the operation of East Worthing WTW and therefore could not be relocated. It was also argued that when the WTW was originally built extensive modelling would have been carried out during its design prior to construction. At that time the optimum location and depth would have been selected within the constraints of design and the local environment, ground conditions and so on.

(c) 21" Water Main

- 7.116 The location of the 21" water main proposed to be crossed by the cable corridor is shown on plan SWS Appendix B in SWS's Statement of Case regarding the s127 application relating to the proposed acquisition of SWS interests. The statement indicates that the 21" water main is a strategic pipeline which supplies water resources from West Sussex to East Sussex and supports the East Sussex area, linking many reservoirs and SWS water supply customers. SWS pointed out that during construction of the Rampion export cable corridor it would be essential to determine the depth of the water pipeline to ensure that it would not be affected by the proposed construction works. It was also stated that due to its strategic importance for water supply unconstrained access to the 21" water main is required at all times. SWS found it difficult to judge the consequence of failure of this water pipeline in terms of any repair timeline required, which would in part be dependent on the time of year, but it was explained that the main is critical in maintaining water supply to East Sussex.

- 7.117 SWSL argued that if the 21" water pipeline did need to be relocated (which would be unclear until any further site investigations and surveys were carried out), consideration would have to be given to where and when relocation would occur. The pipeline is shown in SWS infrastructure records as being located within the carriageway of the A27 approaching Worthing, which is a very busy strategic highway route. There was therefore a likelihood that any relocation would involve a long lead time. In addition to this the new pipeline would have to be built and commissioned first before the existing pipe was removed. There would be no easy time to undertake any relocation from a supply perspective as in the winter there could be water resource issues as part of cold weather conditions and in the summer there could be issues due to very high demand of water resources in this area. It was further argued that it is essential that continuity of service to SWS customers is maintained at all times.

(d) Access to the Wastewater Treatment Works and Rising Main

- 7.118 The location of the works and the incoming mains potentially affected by the proposed works are shown on the plan SWS

Appendix A to the Statement of Case submitted in response to the S127 application relating to the proposed acquisition of SWSL's interests. SWS explained that the access requirements that it held must be addressed and maintained. Due to ongoing inlet refurbishment works the WTW is currently manned 24hrs a day, seven days a week by a team of four operators until April 2014, when a shorter daily operational cover will be instituted. The contractors also require access. Management and administrative staff occupy offices at the site and require daily access. The site is also accessed by the SWS maintenance team as required for routine maintenance or emergency repairs. The WTW site is continuously monitored by the SWS regional control centre, and outside of normal working hours and emergency response team are sent to site to deal with any operational problems identified. Therefore site access is required for large numbers of vehicle movements seven days a week.

- 7.119 SWS also explained in its Statement of Case that the ongoing refurbishment works, plus future planned works generate an access requirement for access for external Contractor and sub-contractor staff, plant and equipment. Any limitation of this access could extend the duration of the works, increasing costs. The site is designed to take liquid sludge imports from surrounding satellite sewage treatment works, albeit the site does not currently use this facility. There are no current plans to undertake this activity unless demand from other sites necessitates use of the facility. SWS anticipated that the biggest disruption to access arising from the Rampion project's implementation would occur during the laying of the cable ducts and associated works. It was argued that (having regard to the points identified above) constant access is needed to the site and to the site assets including equipment, sewers and outfalls to ensure operation of the water treatment works.
- 7.120 SWS indicated that potential consequences of being unable to access the site when immediately required include loss of operation leading to failure of the works and breach of the environmental permit. There is no alternative access route available to SWS and therefore it was emphasised that the current access must be maintained at all times. The WTW also has shared access rights to a number of users including a limited number of staff and contractors who operate and maintain the mobile phone mast on site, and the local power supplier whose staff need access to the HV transformers and switchgear located within the WTW site.
- 7.121 SWS's Statement of Case also confirmed that there is a rising main which is pumped flow from Lancing Park Pumping Station to the WTW. This pumping station receives flows from the section of the catchment which is shown on Figure 4 (shaded) which approximates to a population of 2,466 (reference Southern Water Asset Miner). If the rising main failed then properties served by

the pumping station would be at risk of sewage flooding. The storm and emergency outfalls, as for the treated effluent outfall, are subject to the EA License and any breach of the conditions would result in breach of the terms of that license.

Brooklands Pumping Station

7.122 Brooklands Pumping Station is located within SWSL Plot 4 identified in the applicant's BoR and labelled for temporary use on the Land Plan (Sheet 1 of 12). The applicant's declared purpose for acquisition of temporary property rights was unclear to SWS at the time of preparation of its Statement of Case in relation to the s127 application and this created some uncertainty regarding any possible impact upon the substation. In any event, however, SWS was concerned that access is required to SWS facilities including the pumping station on a 24 hour basis in case of emergencies.

(e) Conclusions regarding SWS Interest

7.123 The Panel notes that none of the information provided by the applicant or any other IP disagreed with or challenged the detailed information put forward by the SWSL and set out above. No other information made available to the ExA during the examination raised any disagreement with the information provided by SWS.

7.124 In the light of the information available, the Panel accepts that the East Worthing Wastewater Treatment Works provides an essential public service by removing and treating sewage for safe disposal. It is considered that the site operates constantly and that in addition to the large number of predictable, everyday, accesses and movements needed in and out of the site, Southern Water staff need to be able to access the site on an emergency basis at any time.

7.125 The 21" Trunk Water Main is also of critical importance to the operation of the Southern Water Services water supply network. Diversion of critical apparatus would require long lead-in times (potentially exceeding 18 months) and in some cases may require other consents not within the remit of Southern Water.

7.126 In the light of the ExA's findings in these matters it is clear to the Panel that protection of the interests of SWS in relation to sewage treatment (including related effluent disposal) and water supply is of particular importance to consideration of the public interest in any assessment of the Rampion application.

7.127 Towards the end of the examination protective provisions in relation to the interests of SWS were agreed between the applicant and SWS. As a result both SWS's representation and the applicant's s127 application in relation to SWS's interests were withdrawn.

- 7.128 In the light of the findings set out in this chapter in relation to the interests of statutory undertakers the Panel has considered very carefully the public interest dimensions of the compulsory acquisition proposed by the applicant. It has reviewed the protective provisions agreed by the relevant parties and now included unchanged in the recommended draft Order at Part 4 of Schedule 12. It is considered that the protective provisions provide adequate safeguards to the Worthing Waste Water Treatment facilities, including the relevant input and outfall pipelines, to the various pumping stations identified by SWSL and to the 21" Water Main supplying East Sussex.
- 7.129 In the light of the points outlined above, and subject to the protective provisions now included in the recommended draft Order at Schedule 12, the Panel finds that the property rights proposed for compulsory acquisition in the Order application can be purchased without serious detriment to the carrying on of the SWS undertakings for waste water treatment and water supply. It further concludes that the public interest is adequately safeguarded within the provisions of the order in relation to these very important statutory services.

GlaxoSmithKline interests

- 7.130 In relation to the property and commercial interests of GlaxoSmithKline (owners of land or rights in Plots 2, 10, 11 and 16), GSK submitted Relevant and Written representations (REP-086, REP-273) objecting strongly to the proposed acquisition of rights and physical works related to the proposed export cable route where that route is proposed to cross two GSK underground effluent waste disposal pipelines which extend southwards and eastwards from GSK's large pharmaceuticals production plant on the eastern edge of Worthing, under the Brighton-Worthing railway line and around the eastern edge of the Worthing Pleasure Park then under the A259 and the foreshore and out to sea for a distance of several hundred metres. Particular concerns were raised regarding the risks to GSK's commercial production associated with the proposed crossing points where the route of the Rampion export cable corridor would intersect with the GSK pipeline route.
- 7.131 GSK drawing reference number G.W. 0138 Revision B entitled: '*Proposed Wind Farm Cable Route and GSK Effluent Pipeline*' supports the GSK written representation (REP-273). It illustrates the three potential clash points relating to the above-mentioned Plot numbers where the Rampion export cable are proposed to cross the GSK effluent pipelines. Moving from north to south away from the GSK Worthing pharmaceuticals factory, these are located:
- At Plot 11 immediately to the south of the horizontal directional drilling (HDD) location where the export cable is

proposed to pass under the Brighton-Worthing railway. The submitted draft Order proposes the compulsory acquisition of a number specific new rights to facilitate the construction and maintenance of the cable corridor and also to retain and use the cables for the transmission of electricity; effect access to the highway; install and maintain cable marker posts; clear and cut back vegetation including trees and shrubs; remove any existing fencing for the duration of construction and/or maintenance works; erect fencing and create secure maintenance compounds; store and stockpile materials; lay out temporary paths for public use, and carry out environmental or ecological mitigation or enhancement works. A restrictive covenant over the land is also proposed in order to prevent the erection of any building or construction erection or works of any kind; prevent hard surfacing of the Order land without the consent of the Undertaker; prevent anything to be done by way of excavation of any kind in the order land nor any activities which increase or decrease ground cover or soil levels without the consent of the Undertaker save as are reasonably required for agricultural activities, and prevent the planting or growing within the order land of any trees, shrubs or underwood without the consent in writing of the Undertaker. (Schedule 7 to the recommended Order).

- At Plot 10 on overgrown land located immediately to the west of the end of St Paul's Avenue, Shoreham-on-Sea, where an access track to the Rampion cable corridor is proposed to cross over the GSK effluent pipeline. Schedule 9 of the recommended Order indicates that the purpose of the proposed compulsory acquisition of rights for temporary possession of this Plot would be for the laying out of temporary haul roads and improvements to tracks and to provide access for carrying out the authorised project.
- At Plot 2 where the applicant's proposed vehicular access to the landfall point on the foreshore (between Shoreham-on-Sea in the east and Lancing in the west) crosses the GSK effluent outfall pipeline just after the latter has crossed under the A259 and before it is routed under the foreshore and out to sea. The declared purpose of granting the power of temporary possession set out at Schedule 9 is the same as for Plot 10, ie for the laying out of temporary haul roads and improvements to tracks and to provide access for carrying out the authorised project.

7.132 Negotiations took place between the applicant and GSK regarding a private Crossing Agreement separate to and outwith the terms of the proposed DCO, which appeared to the Panel from the oral and written submissions made to be GSK's preferred approach to resolution of the matter. There was also an exchange of correspondence between the applicant and GSK regarding draft

protective provisions, which ended in disagreement over the terms of the draft protective provisions proposed by the applicant at Schedule 12 Part 5 (and submitted to the examination in the applicant's final draft Order). It appeared to the Panel from the content of the applicant's written response to deadline X (REP-519) that the reason for the parties' failure to conclude the crossing agreement during the course of the examination related to disagreement over commercial terms and/or matters of detail rather than the principle of the agreement.

- 7.133 At the close of examination a crossing agreement that was apparently acceptable to GSK had been prepared by the applicant and was ready for signature but the agreement was not signed and completed by examination close. The Panel received no written confirmation that the agreement had been completed. In its written response to deadline XII before the close of examination GSK addressed the possibility that the Crossing Agreement with the applicant might not be completed (REP-625). The company maintained its concerns regarding the wording of the relevant proposed protective provisions included at Schedule 12 Part 5 of the draft Order. GSK also put forward wording amendments to the applicant's proposed protective provisions at Schedule 12 Part 5 for consideration by the ExA.
- 7.134 In the Panel's final Rule 17 letter questions the applicant was provided with an opportunity to comment upon any documentation that had been submitted after the final hearing, which included the GSK amendments. As indicated above it confirmed that the form of the crossing agreement had been agreed with GSK and that the agreement would be signed and completed by 31 January 2014. The accuracy of the applicant's statement was subsequently confirmed in writing by GSK's planning consultants (REP-645).

Objections by GSK regarding adequacy of Funding Arrangements

- 7.135 As a separate Issue to its objections regarding compulsory acquisition and works implications for its pipeline, GSK raised a concern in its submission(s) (REP-273, REP-324, REP-398) regarding the adequacy of the total level of funding available under the funding agreement and also the level of funding that might be payable in relation to any one compensatable event. It argued that the implications of any disruption of its effluent disposal as a result of interference or accidental damage to its effluent pipeline arising from the proposed Rampion works could be very serious. GSK stated that the continuing operation of the pipeline is crucial to GSK's disposal of effluent under its Environment Agency (EA) disposal licence. It was suggested that in the event of disruption of the licensed effluent disposal GSK would have very limited capacity to store effluent on site and would very soon be required to cease its pharmaceutical production at the Worthing factory. It was argued that the value of the production likely to be lost in the event of such a stoppage

would far exceed the amount provided for in the Funding Agreement to cover all potential claims.

- 7.136 Specific concerns raised by GSK regarding the adequacy of funding arrangements may be summarised as follows. The cap on the overall maximum level of claims provided for in the PCG is £10,000,000, which both GSK and the local residents suggested might be inadequate. GSK suggested that, in the event of a close-down of its Worthing plant as a result of any interference with its fragile plastic effluent outfall pipelines, a single claim resulting from loss of production could easily exceed the value provided in the PCG to cover all possible claims under the Compensation Code and to meet statutory blight claims. In various responses including its submissions at the CA ISH held on 27 November 2013 (HR-064 to HR-067) the applicant indicated that the PCG was not intended to cover all forms of compensation. Its purpose is to cover specific compensation arising from properly justified statutory Compensation Code and statutory blight claims. Costs associated with potential incidents during construction would need to be covered under relevant contractors' insurances.
- 7.137 GSK suggested that in view of the status of the applicant company as a project vehicle with little resource base of its own, the PCG should be made from the parent company directly to the relevant affected persons (AP), in order to avoid risk of non-payment. The applicant responded that this arrangement would be unworkable due to the number of Affected Persons that would need to be specified in the PCG and the extent to which the identity and contact details of relevant AP involved may change over the period between the final BoR update and the payment of any compensation.
- 7.138 Clause 15 of the Parent Company Guarantee included with the applicant's Funding Statement (APP-032) provides that:
- '15. No claim may be made by the Beneficiary in relation to any land or right over land or claim for which full and final settlement has been reached whether by agreement Court Order Lands Tribunal decision or otherwise whether or not the sums were paid to the Beneficiary or a predecessor or successor to the interest of the Beneficiary.'*
- 7.139 In relation to this provision GSK further argued that Clause 15 of the PCG should not apply *'whether or not the sums paid were paid to the Beneficiary'* and that it should only apply where the sums were paid - the Beneficiary should otherwise be entitled to pursue compensation.
- 7.140 The Panel noted that the applicant's various responses to the GSK objections did not contest the GSK argument that the value of any individual adverse event arising from a potential shut-down of the GSK Worthing pharmaceutical plant might exceed £10,000,000 -

the cap imposed on the total value of compensation provided for under the PCG. However it did argue that the PCG was not intended to cover compensation liabilities arising from all potential sources. It was merely intended to cover costs arising from compensation payable under the statutory Compensation Code and/or statutory Blight provisions.

- 7.141 In relation to GSK's concerns regarding Clause 15 of the PCG the applicant argued that the PCG had to be read as a whole and that Clause 15 was not a free-standing provision. That clause had to be read alongside other clauses that set out the obligation of the parent company to pay to beneficiaries all amounts that are in each case due. At the Compulsory Acquisition Hearing held on 27 November 2013 the ExA questioned the applicant regarding Clause 15. It was pointed out to the applicant that, whether or not the content of the agreement as a whole addressed the concerns put by GSK, it was easy to understand why a reader coming to the PCG document afresh might read clause 15 as GSK had done and arrive at the same interpretation. The applicant undertook to consider the wording and took the matter away but did not submit an amendment.

National Trust interests

- 7.142 The initial concerns raised in the relevant representation by the National Trust with respect to its inalienable interest in Plot 46 located to the south of Tottington Mount in the South Downs National Park were resolved through clarification. The applicant confirmed that the Order does not seek to acquire any part of the NT's inalienable freehold interest but is acquiring new rights in relation to the reversionary 999 year leasehold interest that has been granted by the trust to a private individual. The applicant confirmed that the Trust now appeared content that its inalienable interest was not now affected by the Order as proposed. The Panel notes that the Trust has not pursued any objection to any content of the Order related to compulsory acquisition.

Interests of Mr Charles Worsley

- 7.143 At the Compulsory Acquisition ISH held on 27 November 2013 Mr Charles Worsley attended and asked to address the ExA. Although Mr Worsley had not formally requested to speak in advance of the hearing, the Panel decided to hear his oral submission. Mr Worsley explained that the proposed compulsory acquisition of Plot 92 by the applicant to provide for a maintenance access track to the proposed new Rampion onshore substation from Bob Lane would extinguish existing rights of access to the western part of his agricultural land at Coombes Farm.

- 7.144 Under questioning by the Panel Mr Worsley confirmed that it was possible to access the area of agricultural land in question from other land in his ownership. However he explained that this

alternative access would be tortuous and there was no metalled track. In winter access would involve passing across land that would be difficult to negotiate, due to ground conditions. It was suggested that on this basis the access via a hard surfaced track that was proposed to be removed through compulsory purchase would seriously disadvantage the agricultural management of the holding. It was also suggested that the acquisition would preclude the installation and maintenance of utilities that may be needed or helpful to support agricultural production, such as water and electricity.

Interests of Bolney residents

- 7.145 A number of residents of Bolney, supported by Twineham Parish Council, raised concerns in their relevant and written representations regarding potential injurious affection arising principally from the location and construction of the proposed Rampion substation together with associated and ancillary development upon the residential amenity and value of their properties, which are located close to but not within the LLAU (Limits of Land to be Acquired or Used) in the northern part of the proposed project.
- 7.146 None of the parties who made written representations on this basis asked to be heard at the compulsory acquisition hearing. Nevertheless, the Panel did seek to clarify with the applicant how the compulsory acquisition proposals related to the interests involved, including any allowance made for potential injurious affection claims in the Funding Agreement (Parent Company Guarantee).
- 7.147 None of the land or rights in land in the Bolney area proposed to be acquired by the applicant within the Order belongs to parties which had raised concerns regarding the project proposals other than the interests of Mr Charles Worsley, which are considered above.
- 7.148 Local residents considered that the joint liabilities related to property-related claims might exceed £10,000,000. One resident's submission also argued in relation to the adequacy of the applicant's proposed Funding arrangements that an escrow fund should be provided by the applicant to ensure that funds would be available to address the cost of decommissioning the onshore substation following cessation of the Rampion OWF's operations as a generating station. The need for decommissioning of the onshore substation following cessation of the OWF's operation was also supported by a number of local residents and by the Twineham Parish Council. Onshore decommissioning is considered in Chapter 4 and in Chapter 8 et seq.

Objection by Ms Pat Berry and Michael Whiting

7.149 An objection to the applicant's proposed compulsory acquisition of rights in Worthing Pleasure Park (also known as Brooklands Park) was made by Ms Pat Berry and Mr Michael Whiting in their written submission received 12 November 2013 (REP-436). The objection was raised on the basis that the provision of land for the public park was a charitable donation to the Council in the wider public interest by the previous owner and that the land is the subject of covenanted legal restrictions that would preclude acquisition of rights for the purposes of the Rampion project. The Panel sought to clarify the position with the applicant, who produced a letter from Worthing Council confirming that the matter had been considered but that no Land Registry evidence had been identified that would support the submission of Mr Whiting and Ms Berry (REP-436). The applicant subsequently argued (in its written response to deadline XI (REP-478) that the possible existence of historic legal restrictions would not, in any event, preclude compulsory acquisition. It was suggested that such considerations supported the justification for the applicant's compulsory purchase proposals, since part of the CA rationale was to address any historic third party interests or legal constraints that might obstruct or otherwise delay the delivery of the Rampion OWF project.

The ExA's Conclusions regarding CA powers

- 7.150 The Panel's has carefully considered whether the range of compulsory acquisition and temporary possession and use powers sought by the applicant should be recommended to the Secretary of State for inclusion in any Order to be made. It has applied the relevant sections of the PA2008, notably s.122 and s.123, the Guidance⁵³, and the Human Rights Act 1998 and, in the light of the representations received and the evidence submitted, has considered whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 7.151 The draft DCO seeks to address both the planning principles associated with the proposed development and the compulsory acquisition powers that may be necessary to deliver it. The case for compulsory acquisition powers cannot properly be considered unless and until the Panel has formed a view on the case for the development overall, and the consideration of the compulsory acquisition issues must be consistent with that view.
- 7.152 In the conclusion to the preceding chapter (chapter 6) the Panel reached the view that development consent should be granted. The question that the ExA addresses in this chapter is the extent to which, in the light of the factors set out above, the case is made for compulsory acquisition powers necessary to enable the development to proceed.

⁵³ Planning Act 2008, Guidance related to procedures for compulsory acquisition (CLG, 2013)

Requirement for the land and the public interest case

- 7.153 S122 of the PA2008 provides that an Order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the considerations in subsections s122(2) and (3) are met. The requirements of these subsections are set out at paragraph 7.29 above.
- 7.154 On the basis of the information before us, and in the light of the points assessed in this compulsory acquisition chapter of the report, the Panel is satisfied that all the land and rights in land proposed to be acquired by the applicant in the Order as now recommended are required to facilitate, or are incidental to, that development.
- 7.155 The land and rights in land that are proposed to be compulsorily acquired under the Order as recommended relate to the facilitation of the associated development (ie the export cables, onshore substation and grid connection) necessary to enable the Rampion OWF project to be connected by electricity transmission cables and apparatus to the National Grid Electricity network. This associated development would enable export of the electricity generated by the Rampion project for wider distribution through the national electrical public utility network.
- 7.156 In the light of the points and findings reviewed in this chapter above, the Panel concludes that the considerations defined at s122(2)(a) and at s122(2)(b) of the PA2008 are both met, and that consequently the test outlined at s122(1) is met.
- 7.157 In addition, NPSs EN-1 and EN-5 set out as UK Government policy (after relevant issues have been debated in Parliament) the need for development of the types of renewable energy generation and transmission infrastructure proposed in the Rampion OWF project DCO application.
- 7.158 In the light of the points addressed above, the ExA concludes that there is a strong public interest case in support of the application and that a clear public benefit arising from the proposed development has been demonstrated (for example, in the applicant's SoR and relevant hearing submission at the Compulsory Acquisition ISH held on 27 November 2013. The ExA notes that no AP has sought to argue that no public benefit would arise from the application proposals. In addition, the Panel notes that none of the objections raised by APs to the compulsory acquisition elements of the Order have sought to demonstrate that the land or rights whose acquisition is proposed is not required for the development, or to facilitate or be incidental to the development.

7.159 Having regard to the points made above regarding the case in the public interest, the Panel further concludes that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition in the recommended Rampion DCO will outweigh the private loss that would be suffered by those whose land is to be acquired. As a consequence the test at s122(3) of the PA2008 (as amended) is also met.

Alternatives to compulsory acquisition

7.160 The DCLG guidance note: 'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land' requires (para 20) that –

'The promoter should be able to demonstrate to the satisfaction of the decision-maker that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored...'

7.161 *The process through which the applicant explored alternatives is described at paragraph 7.64 et seq above. No interested party objected that the work undertaken by the applicant in relation to exploring alternatives to compulsory purchase, including negotiations for voluntary acquisition, was in any way inadequate or deficient.*

7.162 *During the CA hearing held on 27 November 2013 (HR-065 to HR-067) the Panel investigated thoroughly the approach adopted by applicant and its agents in establishing the compulsory purchase proposed in the Order application. It was clear that intensive attempts had been made to secure voluntary agreement from affected landowners and other relevant property interests that would be affected by the Order. We were satisfied that a high level of take up of the voluntary agreements offered had been achieved. Negotiations were continued throughout the examination period and a number of revisions to the Book of Reference (BoR) were submitted, including a final update before close of examination (REP-606 to REP-614).*

7.163 Having regard to all the information before us relevant to the proposed compulsory acquisition, together with the assessment of the relevant and important matters considered in this chapter (including the assessment of any issues raised by the parties in connection with specific plots as set out below), the Panel is satisfied that the applicant has explored all reasonable alternatives to compulsory acquisition.

Wider consideration of alternatives

7.164 The Panel has also considered the compulsory acquisition guidance provision in terms of the selection of the site, the scale of the development proposed, the specific characteristics of the

development and then in relation to the proposed acquisition of each parcel of land (in the sections on those parcels).

- 7.165 The application documents consider the question of alternatives. In particular the ES includes an appendix regarding assessment of alternatives (APP-128).

The site selected

- 7.166 All of the alternatives in relation to siting, routeing and technological alternatives put forward by the parties were considered by the applicant at the pre-application stage to one extent or another, as set out in the ES. In the light of all the relevant information available to us, in Panel's judgement the level of consideration given to these alternatives by the applicant was proportionate and adequate.
- 7.167 The Panel considers that no satisfactory alternatives were put forward by Affected Persons to resolve their concerns regarding the Rampion application CA proposals. The siting, routeing and technological alternatives put forward were also considered and explored in a proportionate manner by the Panel as set out in chapter 4 report. In the Panels' judgement none of the alternatives put forward are sufficiently worked through, demonstrably technically credible or demonstrably cost-effective to be given serious weight.
- 7.168 That finding leads on to the related question as to whether the application proposals presented are so flawed as to justify refusal. In the light of the Panel's assessments elsewhere in this report, in our view none of the issues raised in connection with the proposed onshore siting and routeing proposed - whether in connection with compulsory acquisition or in connection with any other aspect of the draft Order - are of such magnitude that they cannot be addressed adequately through mitigation or offset measures.
- 7.169 The Panel has considered carefully the alternative of relocating the onshore substation site at Bolney but notes that the alternative site (Site Option B) advocated by Twineham Parish Council and a number of local residents lies mainly outside the Order Limits for this application. In legal and procedural terms it is not open for the Panel to recommend refusal an acceptable proposal merely because it may not be the best of a range of options considered at the pre-application stage. The scope of the judgement available for the Panel is whether the proposals submitted for examination (including the relevant mitigation measures provided for in the Order) could be developed without giving rise to effects that would be so adverse as to justify refusal of the DCO application. For these reasons the Panel does not consider that this alternative can or should be given weight.

7.170 At the Landscape/Seascape and Visual Impact ISH held on 31 October 2013 (HR-043 to HR-046), the applicant agreed that a principal reason for selection of the proposed route passing through the South Downs National Park related to considerations of cost. The Panel notes that, due to the public funding support mechanism for renewable energy (the 'strike price' mechanism), there is also a wider public interest in ensuring that the cost of renewable energy projects needed to meet the UK's carbon and energy commitments is managed effectively

7.171 The Panel is satisfied that the applicant has explored all alternatives to compulsory acquisition of the land and rights required, as detailed above.

The specific characteristics of the site

7.172 The Rampion site includes the main offshore project (ie the turbine array) supported by marine associated development such as the inter-array and marine export cables and offshore substations, together with the onshore associated development including the onshore export cables and onshore substation.

7.173 It is clear from the applicant's Statement of Reasons (APP-031) that it is the onshore elements of the project that give rise to the compulsory acquisition proposals included in the draft Order. The onshore export cable route selected provides a relatively direct route from the landfall point to the nearest connection point to the National Grid, subject to limited deviations to avoid urban areas and other development constraints.

The scale of the proposed development

7.174 From the content of the application information submitted and the applicant's explanation of the project at various stages during the hearings, it is apparent that the scale of the onshore associated development that gives rise to the compulsory acquisition of land and rights in land is largely dictated by the scale and electrical output of the array and the resultant technical requirements for export transmission of that electricity to the national grid. Despite questioning of relevant parties by the Panel, no indication was provided at any stage in the examination that the owners of the existing transmission infrastructure network in the West Sussex area are willing to make the necessary investments in the existing network to accommodate the output from Rampion.

7.175 National Grid Electricity Transmission Ltd confirmed, in its statement submitted to the examination by the applicant (REP-384), the relationship between sub-regional transmission constraints and projected future demand. From the information submitted to us, including the information contained in the application and the explanatory statement from National Grid, the Panel is satisfied that the Rampion OWF's output of up to 700MW

requires the provision of an onshore export cable corridor of the capacity proposed by the applicant in order that the project is able to contribute the anticipated maximum load of electricity into the national electricity distribution grid.

7.176 The need for a cable corridor of 40m width (including a working width of 30m plus a further 10m for micro-siting), was considered carefully by the Panel. During the hearings we sought a detailed explanation from the applicant and also invited the applicant to measure and set out the dimensions on part of the cable corridor route in the South Downs National Park when we undertook accompanied site visits.

7.177 The applicant indicated in the ES onshore project description (APP-059) and in hearing discussions that it would seek to narrow the working width to 30m as the details of the route within the 40m corridor are refined. It was further indicated that a different technique would be used when the cable corridor is cut through the area of the Tottington Mount Scheduled Ancient Monument. It was suggested that the preferred technique for trenching the SAM site is more intensive and expensive but would allow the working width to be reduced to approximately 20m.

7.178 It was noted that none of the other parties objected to the working width arrangements proposed or considered them to be excessive in terms of land take. No party suggested that the extent of the land take proposed was unnecessary for the purposes of facilitating the project. In the light of all the relevant information before us and as summarised above the Panel considers that the working width proposed for the export cable corridor appears reasonable and justified in all the circumstances of the application, subject to the mitigation proposed in the recommended Order.

Having regard to all the information before us relevant to the proposed compulsory acquisition, together with the assessment of the relevant and important matters considered in this chapter (including the assessment of any issues raised by the parties in connection with specific plots as set out below), the Panel concludes that the land and rights proposed for compulsory acquisition is no more than is reasonably required for the project

The case for acquisition of land or rights in specific plots

7.179 The ExA has reviewed the Book of Reference and Land Plan in detail and asked a number of written and oral questions regarding the content of these documents over the course of the examination. Having regard to the responses received from the applicant, affected persons and other interested parties, a number of issues and matters specific to particular plots were identified and examined in greater detail. Those issues/matters are considered below. In relation to all the other plots included in the

BoR and Land Plan, it is the judgement of the Panel that the land and rights in land proposed for compulsory acquisition are necessary for the project and are no than reasonably required.

7.180 The Panel's conclusions in relation to the interests of statutory undertakers are set out earlier in this chapter.

7.181 In relation to the specific plots proposed to be acquired the principal issues/matters that required further exploration included points relevant to:

- (a) *Plots 2, 10 and 11, in which GSK hold existing rights related to its two parallel effluent pipelines. The applicant seeks to acquire new rights in this property associated with construction and subsequent maintenance of the export cable corridor;*
- (b) Plot 46, which is land owned inalienably by the National Trust but leased on a very long lease to a farming interest. The applicant seeks to acquire new rights in this property associated with the construction and subsequent maintenance of the export cable corridor;
- (c) Plot 92, owned by Mr Charles Worsley, owner of Coombes Farm. This plot is proposed by the applicant as a freehold acquisition for purposes associated with the construction and maintenance of a permanent vehicular and pedestrian access to the proposed new onshore substation near Bolney from Bob Lane, Twineham, for the accommodation of a realigned public footpath (Footpath 8T) and for mitigation works including landscaping.

7.182 In relation to these plots, after progress with various negotiations and discussions before and during the examination, the Panel noted:

- the potential for a Crossing Agreement between GSK and the applicant with respect to Plots 2, 10 and 11;
-
- the absence of any sustained concern from the National Trust regarding the applicant's approach to the acquisition of interests on Plot 46 once it was clear that there was no proposal to acquire any inalienable NT rights in that plot and
- what appeared to the Panel to be reasonable arrangements put forward by the applicant in response to Mr Worsley's objection in order to ensure provision of access and utility rights to Mr Charles Worsley on Plot 92 following compulsory acquisition of the freehold interest in the land by the applicant.

7.183 As a result of progress made during the course of the proceedings, by examination close any concern regarding Plot 46 appeared to the Panel to have been resolved by agreement of an approach that avoided any implications for the NT's inalienable property interest. There was also a good prospect that the concerns of both GSK and Mr Worsley would be resolved through agreement with the applicant. The detail of these matters is set out below, as is consideration of an objection by two parties, neither of which falls within the legal definition of an AP, to the applicant's proposed compulsory acquisition of new rights in Brooklands Park (also known as Worthing Pleasure Park) from Worthing Borough Council.

(d) *GSK interest in Plots 2, 10 and 11*

7.184 Having regard to the information placed before the ExA during the examination, the Panel's assessment of the amendments proposed by GSK is that

- the apparent availability of an agreement in a form acceptable to GSK indicates that a solution to the concerns raised by that company is likely to be forthcoming prior to determination of the Rampion DCO application by the SoS;
- a number of the amendments to the draft Protective Provisions for pipeline operations included at Schedule 12 Part 5 proposed by GSK do not appear to take account of the point that those provisions are intended to protect not only GSK's pipeline interest but also those of gas undertaker(s) and Southern Water Services Limited. If the amendments proposed by GSK were to be accepted unchanged then the other pipeline interests would be left without protection in the Order;
- the interests of SWSL and the gas undertaker(s) are both relevant and important matters as can be seen, for example, from SWSL's explanation of the potential risks to its operations set out in its written submission regarding the s127 application in respect of its interests (S127-057). Sewerage, water and gas supplies are all essential or very important services to domestic and business customers in the areas served by the public utilities concerned;
- having regard to the wider public interest implications described above, the proposed GSK amendments to the pipeline protective provisions included in the draft Order at Schedule 12, Part 5 cannot be accepted as presented. The Panel has considered thoroughly the representations submitted by GSK, including all concerns raised in respect of the Rampion project proposals. We conclude that if the Order as recommended by the Panel was made without the protective provisions proposed by GSK, it would nonetheless mitigate satisfactorily the potential impacts identified by GSK,

taking account of the applicant's confirmation that risk of damage to third party property during construction and resultant liabilities would be covered by relevant contractors' insurance.

NT interest in Plot 46

- 7.185 Based on the information available to the Panel regarding this matter it is accepted by the Panel that the provisions of s130 of the PA2008 would not be engaged by the proposed Order. A voluntary agreement between the applicant and the long leaseholder was reached in respect of this plot.

Mr Charles Worsley interest in Plot 92

- 7.186 At the CA hearing on 27 November 2013 (HR-064 to HR-067) the ExA questioned the applicant regarding the justification for the extent of the areas of land proposed to be acquired in relation to Plot 92. The applicant explained the purposes for which the freehold acquisition was sought. The southern part of the land was required to enable construction and long term maintenance of a vehicular and pedestrian access to the substation compound by metalled road from the adopted highway in Bob Lane.
- 7.187 The width of the road was based on the potential requirement for transport of indivisible components of the substation should replacement parts (such as a transformer) be required. This strip, shown as 'the red area' on the plan included as Annexure 2 to the applicant's written response to deadline X (REP-541), is also intended to accommodate the line of public footpath 8T.
- 7.188 Acquisition of the freehold interest was justified by the applicant on the basis that the degree of interference with the surface of the land on a permanent basis means that mere acquisition of new rights would not suffice here; that the applicant and any successor would require control over the access route which could only be guaranteed through the CA process by freehold acquisition, and because public footpath 8T is to be re-aligned, the applicant needed control over the freehold to enable it to dedicate land as a public footpath. It was argued by the applicant that a lesser interest would not be sufficient.
- 7.189 The applicant indicated that it was content to offer rights to Mr Worsley to enable him to continue to use the land once it is in the applicant's ownership for the purposes of passing and re-passing and for electricity and water supply. It was also proposed by the applicant that new rights would be granted to Mr Henson, the owner of neighbouring property with existing rights over the land, to ensure that Mr Henson's land would also have the benefit of rights notwithstanding the construction of the proposed new substation access road.

- 7.190 At the CA hearing the applicant indicated that negotiations were in progress regarding the possibility of an alternative leasehold interest. No conclusion to that negotiation was notified to the ExA by close of the examination. In the absence of an acceptable leasehold interest the applicant seeks compulsory acquisition of the freehold interest in Plot 92.
- 7.191 Based on the information provided to the Panel regarding Plot 92 by the applicant and by Mr Worsley the Panel concludes that the proposed freehold acquisition of Plot 92 is justified and acceptable, subject to the maintenance of the agricultural access to Mr Worsley's holding. In the light of the oral and written undertakings offered to Mr Worsley at and following the CA hearing held on 27 November 2013, which indicated that the applicant was prepared to grant back to Mr Worsley rights of access and utility rights should the compulsory purchase of the freehold proceed, the Panel considers that the probability of a voluntary agreement between the parties is high, whether or not this is reflected in a leasehold agreement rather than freehold acquisition. It is further accepted that the applicant has explored alternatives to CA measures in relation to this Plot. However in the absence of any voluntary agreement it is concluded that the freehold acquisition of Plot 92 as proposed has been justified by the applicant and that the CA of this plot should be confirmed as part of the recommended Order.

Objection by Ms Pat Berry and Mr Michael Whiting

- 7.192 In relation to this objection raised in relation to the compulsory acquisition of rights in Brooklands Park (Worthing Pleasure Park) (REP-436), the Panel notes that no specific evidence is available from the Land Registry or from Worthing Borough Council to support the objectors' suggestion that historic covenant restrictions apply to the area concerned. In any event, the Borough Council which now owns the Park is supportive of the project (REP-012). The applicant has confirmed its view (REP-444) that part of the justification for compulsory acquisition is the need to address the types of historic legal constraint to which the objectors have referred.
- 7.193 After due consideration, and having regard to Government policy as set out in NPS EN-1, which highlights the pressing need for new energy infrastructure in general and renewable energy infrastructure in particular, the Panel agrees with the applicant's position and concludes that compulsory acquisition is required and justified in order to address any uncertainty arising from the existence of any historic legal constraints that may be applicable to the areas of land proposed for compulsory acquisition, including Brooklands Park/Worthing Pleasure Park. The Panel also finds that the compulsory acquisition proposed would have temporary effects on the use of the Park and, once the installation of underground cables is completed, the surface of the land would be re-instated to its original condition to the satisfaction of the Council, subject to

provisions for ongoing access and maintenance of the installed export cable infrastructure.

Human Rights Act⁵⁴ 1998 considerations

- 7.194 A key consideration in formulating a compelling case is a consideration of the interference with human rights which would occur if compulsory acquisition powers are granted.
- 7.195 The first consideration applied by the Panel is whether Article 1 of the First Protocol of the European Convention on Human Rights (rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with) is engaged in relation to the compulsory acquisition aspects of the Rampion OWF DCO application. This protocol provides that:
- '(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
- (2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'*
- 7.196 No residential or commercial properties are proposed to be acquired as a result of the DCO but the Order does involve the acquisition of land and rights in land currently in agricultural, open space and infrastructure uses. None of the owners or occupiers of land or rights in land that are proposed to be acquired compulsorily have objected to the application on the basis of Article 1 of the First Protocol.
- 7.197 The Panel has concluded in its discussion of the case for development in Chapter 6 that there is a strong public interest case in support of the proposals that are the subject of the Development Consent Order application. This conclusion also applies to the compulsory acquisition provisions within the Order that would facilitate delivery of the development associated with the Rampion OWF project.
- 7.198 Article 6 of the European Convention on Human Rights entitles those affected by compulsory acquisition powers sought for the project to a fair and public hearing of their objections. The part of Article 6 relevant to civil proceedings including planning proceedings reads as follows.

⁵⁴ <http://www.legislation.gov.uk/ukpga/1998/42/contents>

'1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice'

7.199 The PA2008 procedure, including the public examination of the application proposals heard by the Panel acting as an independent and impartial tribunal established under the Planning Act, addresses the provisions of Article 6. Subject to the point explained below, all parties have had an opportunity to consider all published documentation, information, submissions and evidence put forward by other parties during the course of the application and to make comments upon them as well as to make their own submissions to the examination.

7.200 Article 8 of the European Convention on Human Rights (ECHR) relates to the right of the individual to 'respect for his private and family life, his home and correspondence ...'. The Article provides that:

'Article 8 - Right to respect for private and family life.

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

7.201 Having regard to the provisions of the ECHR and UK Human Rights Act 2012, content of the application and information submitted to the examination, the Panel is satisfied that no aspect of the recommended draft Order would prejudice the respect due to the private and family life of any party that has participated in the examination. The only issue that might have potential to raise Article 8 with regard to the Rampion application relates to the wider concerns of residents whose properties are located close to the proposed Rampion onshore substation site in the parish of Twineham near Bolney. A particular question that occupied the Panel was whether the anticipated duration, level and extent of disruption to private and family life anticipated in relation to the

period of construction of the large substation is likely to be such as to engage Article 8 of the ECHR.

- 7.202 The ExA has considered this matter carefully and discusses the likely construction effects associated with the development of the substation in chapter 4. While the substation is undoubtedly a large project and the movement of large construction vehicles, operation of construction equipment and handling of volume materials may generate a degree of noise, dust and vibration, the properties concerned are located some distance away from the principal area of construction works.
- 7.203 The requirements included in the recommended draft Order also include measures to ensure proper environmental management of these effects, together with any effects associated with artificial light and longer-term visual impacts. The local authority would be empowered to address through relevant enforcement measures any regulatory issues arising from any failure to observe the environmental controls set out in the requirements included at Part 3 of the recommended Order (for example Requirements 32, 33, 35 and 36, which seek to establish controls over construction hours, external lighting and the control of artificial light emissions, control of noise during construction and control of noise during the operational phase), subject to the defence to proceedings in respect of statutory nuisance included in the Order at Article 14.
- 7.204 In the light of all the information before us and of the Panel's assessment of the construction and operational effects of the proposed project, it is the Panel's judgement that neither the construction effects associated with the work to develop the substation nor the operational effects of the project would attain such a level as to engage Article 8, subject to the proper application of the mitigation measures provided for in the recommended Order.

Panel conclusions regarding availability and adequacy of funding

- 7.205 Relevant CLG Guidance related to procedures for the compulsory purchase of land (Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land, September 2013) indicates that any application for a consent order authorising compulsory acquisition must be accompanied by a statement explaining how it will be funded. This statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required. In relation to the timing of the availability of funding the guidance states:

'The timing of the availability of the funding is also likely to be a relevant factor. Regulation 3(2) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 allows for

five years within which any notice to treat must be served, beginning on the date on which the order granting development consent is made, though the Secretary of State does have the discretion to make a different provision in an order granting development consent. Applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of.'

- 7.206 The ExA scrutinised the funding arrangements for the Rampion project in detail. The details of the proposed funding arrangements are set out in the applicant's 'Funding Statement' (APP-032). The Panel asked a number of written questions regarding both the proposed funding arrangements themselves and their relationship with the proposed transfer of benefit provisions included in Article 7 of the submitted Order. Also, at the CA hearing held on 27 November 2013 (HR-064 to HR-067), the Panel posed a number of oral questions regarding these aspects of the proposed Order together with the PCG offered by the applicant in support of the Funding Statement as evidence of the adequacy of funding.
- 7.207 The applicant is a subsidiary company established for the express purpose of delivery of the OWF Rampion project. At the time of the application the company appeared to have limited financial resources of its own other than that provided by the parent company, which is part of the UK grouping of a large world-wide group which is headquartered in mainland Europe.
- 7.208 Having regard to the terms of Article 7 of the submitted Order (which deals with transfer of benefit of the Order), the terms of the PCG and the content of the Funding Statement, at this stage it is not clear whether the undertaker would sell on the benefit of the DCO if made or whether it would deliver the project itself.
- 7.209 The terms of Article 7 of the draft Order allow for the transfer of all or part (or indeed parts) of the beneficial interest in the project - including liabilities - to another party or parties. subject to the agreement of the SoS. Specifically, Article 7 allows transfer of benefit to anyone with SoS consent save that the CA, temporary use and street powers (articles 15,16, 23, 25, 31 and 32) will only have effect for the benefit of the named undertaker and a person who is a transferee or lessee and in relation to works 3B to 32 is also a person who holds a licence under the Electricity Act 1989 or in respect of street works under article 15 is a street authority (see Article 7(5)).
- 7.210 The version of Article 7 included in the applicant's submitted draft Order was subject to a number of amendments by the applicant in the light of representations and submissions from other parties during the course of the examination proceedings, in order to:

- preclude the transfer of the DML(s) except with the written agreement of the MMO;
- clarify the references to the undertaker shall include references to the transferee or lessee;
- clarify that benefit transferred or granted shall include or be subject to the same restrictions, liabilities and obligations as would apply under the Order as if the benefits or rights were exercised by the undertaker and
- clarify that once the benefit was transferred or a lease was granted enforcement action could not be taken against the undertaker save in relation to a breach which occurs before transfer or grant or where the undertaker acts on behalf of the transferee.

7.211 The second and third points above are of particular significance in consideration of the compulsory acquisition dimensions of the proposed Order.

7.212 In response to ExA written questions regarding this topic, concerns were raised by GSK in relation to the adequacy of the PCG. Concerns as to the adequacy of the PCG in relation to the total liability for possible compensation claims were also raised by local residents living near to the proposed new substation site near Bolney and by Twineham Parish Council.

7.213 In addition to considering these points the Panel sought to explore a number of queries regarding the transferability of benefits and liabilities under the terms of the Order to any successor in title or interest to either the whole or parts of the project. For example, we sought to understand how any grant of a leasehold interest or disposal of the whole interest in any part(s) or the whole of the project might affect the availability of funding for project implementation. We also explored in more specific terms how any transfer of benefit under the proposed Article 7 might affect any potential liabilities in relation to compensation interests under the 1973 Act or in relation to blight.

7.214 Consideration was also given to the overall level of funding available to meet potential compensation claims related to compulsory acquisition, injurious affection and/or blight. At the CA hearing the professional chartered surveyors and valuers advising the applicant regarding acquisition costs and potential statutory Compensation Code and statutory blight claims were questioned by the ExA regarding how their valuation figures were calculated and what overall allowances were made in relation to certain matters.

7.215 At the same hearing the ExA also questioned the applicant's legal advisors regarding the way in which the Parent Company Guarantee is drafted. The Panel finds that the reliance of the

Parent Company Guarantee on a novel approach based on the Contracts (Rights of Third Parties) Act 1999 means that the approach adopted is still largely untested in practice in the DCO context. The applicant did, however, indicate that a similar although not identical agreement was applied to the DCO application for the Port Blyth Biomass Generating Station, which has subsequently been determined by the SoS. The ExA is unsure whether the Parent Company Guarantee meets the basic legal requirements for a contract and whether the courts would find the Contract (Rights of Third Parties) Act applicable to the PCG if this point was tested in law.

- 7.216 Notwithstanding that point, the test of the adequacy of funding arrangements for compulsory acquisition established in paragraph 9 of the relevant CLG guidance (Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land, September 2013) is as follows:

'They should also be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available.'

- 7.217 The ExA notes that this test is significantly less demanding than, for example, the more challenging guidance applied by the SoS in relation to funding guarantees to cover the cost of offshore decommissioning (Decommissioning of offshore renewable energy installations under the Energy Act 2004, DECC January 2011(revised)), where the content of the guidance makes it clear that Parent Company Guarantees are unacceptable.

- 7.218 Irrespective of the legal robustness of the form of PCG adopted by the applicant, it is clear that the parent company and the applicant intend that payment of compensation would either be made or funded by the parent company. The Panel considers that, in the circumstances of this particular application, it is reasonable to consider the wider context and resource base of the group of which the applicant company forms part. The applicant has provided information regarding the financial status of the parent company and wider group. The information confirms that the group is very large and well resourced and that it is promoting the development of a wide range of energy projects, a significant number of large renewable energy projects already having been delivered in the UK and Europe. None of this information was challenged by any party to the examination.

- 7.219 The consequences of any failure to compensate interests whose land or rights in land had been acquired by the applicant would clearly be very negative for the group brand and would create a serious risk to its future credibility with the UK Government and with the wider public. In this regard the ExA accepts the applicant's stated position stated at the CA hearing that it is therefore reasonable to assume that the group would strive to

avoid any reputational damage of that kind in the event that the applicant company was unable to proceed with payment of statutory compensation code compensation once acquisition had occurred or with payment of compensation for statutory blight in the event of a successful blight claim or payment of compensation in respect of injurious affection. No IPs sought to challenge the applicant's stated position in that regard.

- 7.220 Given that the group has yet to commit to build out the Rampion project in the event that the Development Consent Order is made by the SoS, the Panel considered the effects of possible transfer(s) of all or parts of the consented project prior to any commencement of construction, including any risks of non-payment for land or rights acquired compulsorily to enable project delivery. After questioning the applicant closely regarding this point, the Panel is satisfied that an adequate safeguard is available in terms of the control provided to the SoS under subsection (1) of Article 7 of the recommended Order, when considered alongside the provisions of subsection (6) of Article 7. These provide that the consent of the SoS is required before any transfer of benefit may take place, and that:

'(6) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) or (3) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.'

- 7.221 Following a suggested amendment to Article 7(4) by the ExA in the consultation regarding proposed amendments to the applicant's draft Order, the applicant clarified the purpose of Article 7(4), as follows (REP-603):

'The purpose of Article 7(4) is to make clear, in the case of Article 7(4)(a), that for the duration of any lease the transferred benefit will include any conferred rights or obligations imposed, and in the case of Article 7(4)(b) for the duration of any lease the transferred benefit will reside exclusively with the lessee and will not be enforceable against the undertaker.'

There are two exceptions in the case of Article 7(4)(b) where the transferred benefit of a marine licence will be enforceable against the undertaker, namely (i) breach by the undertaker prior to grant of the lease (ii) breach by the undertaker acting on behalf of the lessee. There are not thought to be any other circumstances which would constitute exceptions and the MMO has not suggested any.'

This provision would also apply to a transferee, not only a lessee.

7.222 After due consideration of this argument and in the absence of any countervailing arguments the ExA accepts the applicant's suggested wording save that in the interests of clarity it is considered that the final part of subsection 7(4)(b) should be amended to refer to the transferee or lessee (see insertion below):

'(4) 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)—

(a) 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;

*(b) 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 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 or which occurs as a result of any activity carried out by the undertaker **on behalf of the transferee or lessee.***

7.223 Having regard to the recommended wording, in the event that the benefit of the Order was transferred to another person (body corporate) then any obligations related to payments due in respect of statutory compensation or blight would need to be met by the transferee rather than the Undertaker identified in the Order. In this scenario it would clearly be very important that the SoS had made a careful assessment of the transferee's ability to meet all relevant financial obligations likely to arise prior to authorising the transfer of benefit or any lease of the interest in the project.

7.224 The crucial safeguard provided under Article 7(1) by the need for SoS approval for such transfer of benefit or lease does provide comfort in relation to the adequacy of funding to cover obligations arising in relation to compulsory acquisition, injurious affection or blight. On balance, therefore, while the Panel has reservations regarding the form and terms of the PCG as indicated above, it remains likely that funding would be available to meet compensation obligations in the event of successful claims, including the scenario where a transfer of benefit from the Undertaker to another person or granting of a leasehold interest by the Undertaker to another person had taken place. The Panel therefore finds that there is a reasonable prospect of relevant funding being made available.

7.225 In relation to the level of funding required to be covered by a guarantee or other funding assurance mechanism, in the light of

the submissions of the expert surveyor/valuer witnesses for the applicant at the CA ISH - and following examination of the detailed terms of the PCG - the Panel was also satisfied that the PCG is not required to cover every compensation eventuality. We agree with the applicant's case that the PCG addresses claims likely to arise under the compensation code and in relation to statutory blight and injurious affection. The evidence provided by the applicant's witnesses demonstrated to the Panel's satisfaction that the scope of these aspects of compensation is tightly circumscribed by the relevant compensation legislation and as a result the scope of the maximum compensation liabilities would also be limited. Despite the general concerns raised by GSK, by residents living close to the proposed Bolney substation site and by Twineham Parish Council we have seen no clear evidence that the figures and assumptions advanced by the applicant's surveyors are inaccurate or unreasonable in any way.

- 7.226 Although invited to do so in the ExA's written questions, the Panel notes that GSK did not provide audited financial evidence to justify its claims that any stoppage in production would be likely to exceed the maximum available claim figure provided for under the PCG. In any event, in relation to the GSK concerns and the applicant's responses thereto, it is accepted that the applicant would not seek to damage deliberately the effluent pipelines and that any risks of unintentional damage would fall to contractors' insurance.

The funding required

- 7.227 The consolidated group accounts of the Parent Company, E.ON UK Plc, demonstrate that the total fixed assets of that company amount to over £6 billion. The applicant has indicated at paragraph 2.4 of its Funding Statement that:

'2.4 Through the Parent Company, Rampion has the ability to procure the financial resources necessary to fund the works to be authorised by the order, subject to final Board authority. These funds will include expenditure for:

2.4.1 The cost of acquiring the land identified in the Order; and

2.4.2 The cost of compensation otherwise payable in accordance with the Order.'

- 7.228 No other party has raised any doubt that the Parent Company is in a position to secure funding for delivery of the project should it decide to do so, although a written question was put to all parties regarding this matter by the ExA. In the light of the information provided it is not anticipated that the subsidiary project delivery company would have difficulty in ensuring that the necessary funding was made available.

7.229 In the light of the points reviewed above it is further concluded that the funding guarantee provided for in the Parent Company Guarantee amounting to £10,000,000 total funding that could be made available to meet compensation code, blight and injurious affection claims would appear likely to be adequate to cover the potential liabilities likely to arise under the relevant statutory compensation provisions. This conclusion has regard to the specific evidence provided by the applicant's expert witnesses, takes account of what appears likely to be the most appropriate mechanism for funding of any liabilities for potential damage to GSK interests during construction or maintenance works, i.e. appropriate contractor insurance, and also has regard to the absence of any detailed evidence to the contrary arising from the objectors' submissions.

The source of the funding

7.230 The Funding Statement indicates that funding for the project as a whole would be provided by the applicant's parent company following a decision by the Board. The PCG also provides that in the event of any failure to pay for land or rights acquired compulsorily, the parent company would pay for any properly made and justified claims.

Securing the funding

7.231 As discussed above, the Contracts (Rights of Third Parties) Act 1999 provides the framework on which the operation of the PCG would appear to rest. This framework remains untested as a basis for the operation of compensation provisions under the PA2008 process and the ExA has indicated some reservations regarding the legal status and drafting of the PCG in this regard, namely the status of the PCG as contract to which the Contracts (Rights of Third Parties) Act 1999 might apply. However, the robust financial standing of the applicant company's parent and wider group structure provides considerable comfort and the Panel is accordingly satisfied that the relevant policy test set out at paragraph 9 of the relevant CLG compensation guidance at paragraph 7.201 above is met.

The ExA's Recommendations regarding the Granting of CA powers

7.232 Section 120(5)(a) of the PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO and s117(4) of the PA2008 provides that, if the DCO includes such provisions, it must be in the form of a statutory instrument. Since in a number of instances the DCO seeks to apply s120(5)(a), the DCO was submitted and is recommended in the form of a statutory instrument. No representations or objections were made to the inclusion of these specific provisions.

Satisfaction of conditions at s122(2)

- 7.233 The applicant submitted its case (see section 7 of the Statement of Reasons, including paragraph 7.2) that all of the Order Lands shown in the Land Plan is required for the purposes of the Project, or to facilitate it, or for purposes incidental thereto. In order to deliver the project, the applicant is seeking the acquisition of a combination of freehold ownership, permanent rights (such as rights of cable installation and subsequent access and restrictive covenants to protect the installed cables from being excavated or built over) and temporary possession powers. The applicant argues that through the process it is taking a proportionate approach to the proposed acquisition, mindful of the impact of the expropriation on the affected owners.
- 7.234 No interested parties/affected persons have put forward a specific or compelling case that any of the land proposed for compulsory acquisition is not required for the development, or otherwise required to facilitate or be incidental to the development.
- 7.235 At the CA hearing held on 27 November 2013 (HR-064 to HR-067) the discussion regarding Plot 92, owned by Mr Charles Worsley, considered the need for the extent of the land in that plot whose freehold is proposed to be acquired compulsorily by the applicant. The detail of that discussion is summarised above. The information brought forward by the respective parties in the application and during the examination indicated that land is required for a number of proposed purposes including (inter alia) accommodation of the metalled access track and public footpath 8T, together with provision of space for landscaping including areas for screen mounding and planting.
- 7.236 Having considered the land take likely to be required for these purposes, some of which would provide important environmental mitigation measures to safeguard the amenity of nearby residential properties, the ExA concludes that the whole of the land included in the Plot 92 is required to facilitate the associated development proposed by the applicant in relation to that Plot, subject to appropriate provision for access and utility rights to facilitate the proper agricultural management of the western end of Mr Worsley's holding at Coombes Farm.
- 7.237 In the light of these points and of all the relevant information before us, the ExA agrees with the applicant's case that all of the land and rights in land that are proposed to be acquired compulsorily in the Order are either required for the development to which the development consent relates or are required to facilitate or be incidental to the development. It is therefore concluded that the statutory legal test set out at s122(1) and s122(2)(a) and (b) is met.

s. 122(3) - Whether there is a compelling case in the public

interest for the land to be acquired compulsorily

- 7.238 The applicant's Statement of Reasons highlights what it considers to be the supportive policy context relating to the Project in section 5 of the SoR.
- 7.239 In the light of the support that it argues is available from this wider policy framework the applicant's public interest case is that the Project responds directly to the urgent need to decarbonise the UK energy supply and enhance the UK's energy security and diversity of supply identified in the Government's statement of national policy in NPSs EN-1 and EN-5. The Project would make a significant contribution towards the achievement of the Government's 15% renewable energy target by generating more than 2,100 gigawatt hours (GWh) of electricity each year. At paragraph 5.13 of its SoR the applicant estimates that the project could generate enough electricity for the domestic needs of the equivalent of around 450,000 average UK households.
- 7.240 A number of Relevant Representations were received near the commencement of the application process, of which a relatively small proportion argued that there was no need for the project, due to objections to wind energy infrastructure or other aspects of the Government's emphasis on reducing carbon emissions through the emphasis on renewable energy generation. The Panel gives no weight to the limited number of relevant representations that were founded on objection to aspects of the approach to energy strategy that are reflected in Government policy (which was debated in Parliament prior to designation of the relevant NPS).
- 7.241 Other than the limited number of relevant representations referred to above, which in the Panel's assessment relate to matters addressed in Government policy, no interested party has disputed the need for the renewable energy that is proposed to be generated by the project. Objections to specific elements effects and impacts of the proposed project including its associated and ancillary development (such as the transmission system, cable corridor routing and onshore substation location) have been considered earlier in this report.
- 7.242 No IPs challenged or disagreed with the assessment of international and national policy set out in the applicant's SoR. After careful consideration of each of the policy points put forward in the SoR *the ExA judges the assessment included in the SoR to be a reasonable summary of the policy position and agrees that it provides a positive policy framework against which the application may be considered.* Having regard to the points reviewed above the Panel has accepted the public interest case put forward by the applicant, as discussed in its conclusions to chapter 6.
- 7.243 In the light of the unchallenged public interest case set out in the applicant's SoR and accepted by the Panel, it is concluded that

there is a compelling case in the public interest for the Order Land and rights in land to be acquired compulsorily as proposed by the applicant. The Panel sees no reason to modify or otherwise amend or alter the detail of the compulsory acquisition measures proposed in the applicant's final draft Order, which are now incorporated within the recommended Order.

s.120(5)(a) - Application, modification or exclusion of statutory provisions and s.126 - Modification of provisions relating to compulsory acquisition

7.244 The submitted draft Order included the following provisions which sought to modify existing legislative provisions:

- Article 8 - Application and modification of legislative provisions - Modification of Hedgerows Regulations 1997(a) to include recognition of DCO development consent under the 2008 Act.
- Schedule 8 (relates to Article 25) - Modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants - modifications to the Land Compensation Act 1973(a) - various modifications to the 1965 Act to adapt to the circumstances of the Rampion NSIP project.
- Article 27 - Application of the Compulsory Purchase (Vesting Declarations) Act 1981 - modifications to s3(1),3(2), 3(5), 3(6), s5(1), s5(2) and s7(1) of the 1981 Act to adapt to the circumstances of the Rampion NSIP project.

7.245 The Article 8 modification to ensure that relevant exemption under Regulation 6 of the Hedgerow Regulations applies in the case of the Rampion project was the subject of submissions by WSCC, the SDNPA and NE, who were concerned regarding the potential landscape and ecological implications of the powers that would be available to the promoter of the project under this provision. The points raised related to the landscape and ecological implications of the modification proposed and to consequential needs for adequately informed and sufficient mitigation and monitoring (including sufficient financial and human resources for that mitigation and monitoring), rather than to the principle of modification of the legislation. The latter did not appear to the Panel to have been challenged directly during consideration of the wording of the Order. The matters relating to landscape and ecological mitigation are considered further in chapter 4.

7.246 Article 25(4) of the applicant's final draft Rampion Order also provides that paragraph Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants) shall have 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 Article 25 of a right over land by the creation of a new right or the imposition of restrictive covenants.

- 7.247 The provisions set out in Schedule 8(2) are intended to extend the relevant provisions of the Land Compensation Act 1973 so that compensation for injurious affection would apply to persons in whose land new rights are to be acquired compulsorily or a restrictive covenant over land is purchased or imposed compulsorily. The 1973 Act as drafted restricts compensation for injurious affection to those persons whose land is acquired or taken.
- 7.248 Schedule 8(2) also proposes the modification of s58(1) of the 1973 Act (determination of material detriment where part of house etc proposed for compulsory acquisition), as it applies to determinations under section 8 of the Compulsory Purchase Act 1965 ('the 1965 Act') so that assessment of any material detriment applies when consideration is given to a right over or restrictive covenant affecting relevant land and property.
- 7.249 Schedule 8(3)-(9) extends this approach to the relevant specific provisions of the application of the 1965 Act.
- 7.250 The submitted draft DCO sought to incorporate the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981, subject to a number of modifications. This provision was not subject to any specific representations or objections and is now set out at Article 27 of the recommended draft Order.
- 7.251 Having regard to the circumstances of the application proposals and to all the information provided by the parties during the examination, the Panel considers that the inclusion of these provisions within the recommended Order (albeit under the revised numbering scheme applied in the recommended Order) is appropriate and that the modifications proposed would address legislative points that could be important to the delivery of the project proposals. In the Panel's judgement it is therefore relevant and important to the deliverability of the proposed project that these particular provisions are included within the Order.
- 7.252 In the light of paras 41 and 42 of the DCLG CA Guidance ((Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land, September 2013) and to both the content and the circumstances of the Rampion project, the ExA concludes that the modifications to statutory provisions proposed under the Order as now recommended are necessary, appropriate and likely to be of assistance to AP where the possibility of a successful claim under the relevant provisions may exist.

Considerations relating to s.127 and s.138 of the PA2008

- 7.253 The position relating to those aspects of the submitted Rampion DCO application that engaged s127 of the PIA2008 is explained in relation to the interests of the statutory undertakers earlier in this chapter.
- 7.254 A similar position pertains in respect of the extinguishment of rights, and removal of the apparatus, of statutory undertakers to be considered under s138 of the PA2008. S138 of the PA2008 applies if an order granting development consent authorises the acquisition of land (compulsorily or by agreement) and
- (i) there subsists over the land a relevant right, or
 - (ii) there is on, under or over the land relevant apparatus.
- 7.255 In this context a 'relevant right' means a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is vested in or belongs to statutory undertakers for the purposes of their undertaking or to an electronic communications network operator in line with the electronic communications code.
- 7.256 'Relevant apparatus' means apparatus vested in or belonging to a statutory undertaker for the purposes of carrying on its undertaking or electronic communications apparatus kept installed for the purposes of an electronic communications code network.
- 7.257 Provided that the SoS is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates, the Order may include provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus. As indicated in relation to matters related to s127 of the Act, all four statutory undertakers agreed the relevant protective provisions included at Schedule 12, Parts 1-5 in the recommended Order.
- 7.258 The Panel draws the SoS's attention to the withdrawal of the representations of all four statutory undertakers. No electronic communications network operator submitted any representation or objection to the application. We asked a number of written and oral questions during the examination regarding s127 and s138 matters. On the basis of the information provided to the examination, and in the light of the assessment included in this report, the Panel concludes that no matters of significance in relation to s127 and s138 that might present an obstacle to the making of the Order or provide a reason for refusal of the Order remain outstanding following the inclusion of the appropriate agreed Protective Provisions into the Order as now recommended.

Considerations relating to s132 of the PA2008

- 7.259 The applicant has provided information to the Secretary of State for Communities and Local Government in respect of s132 of the

PA2008, which deals with the acquisition in rights over open space. The s132 process is completely separate to the examination and determination of the application for the Development Consent Order, including the Order's compulsory acquisition provisions. The s132 procedure requires the SoS to determine whether one of the tests set out in s132(3)-(5) applies. If the SoS cannot be satisfied that any of the subsections apply then the order granting development consent will be subject to Special Parliamentary Procedure (SPP). If the SoS is satisfied that one of the subsections applies then he must issue a certificate to that effect and there would be no need for a SPP.

- 7.260 Although the Growth and Infrastructure Act 2013 (GIA2013) has since modified the procedure for consideration of open space matters under the PA2008 so that they may be considered as part of a DCO examination, the Rampion application was submitted before the new legal provisions came fully into force. Transitional arrangements therefore apply.
- 7.261 In this transitional case, the application for a certificate in relation to s132 of the PA2008 falls to the Secretary of State for Communities and Local Government for determination and must be considered under a separate procedure to that for the DCO application, which is to be determined by the Secretary of State for Energy and Climate Change. The certificate consent procedure provides for a public inquiry to be held at the discretion of the Secretary of State for CLG.
- 7.262 By the close of the Rampion examination no confirmation had been received as to whether a public inquiry is to be held into the application to CLG for a certificate under s132 nor regarding the outcome of the application. At the time of writing the Panel notes that it therefore remains uncertain as to whether any of the relevant subsections of s132 apply, and whether a public inquiry is to be held before the decision as to the need for SPP is made.
- 7.263 Of course, progress may have been made since close of the examination of which the ExA will necessarily be unaware, but in any event we would emphasise that careful attention will need to be given to the timescale for completion of the s132 procedure to be addressed by Secretary of State for Communities and Local Government if determination of the DCO application is to proceed within the statutory timetable applicable to the Secretary of State for Energy and Climate Change.
- 7.264 No further aspect of the s132 matter falls for consideration within the report into the Rampion DCO.

8 DRAFT DEVELOPMENT CONSENT ORDER

- 8.1 A draft Development Consent Order (DCO) incorporating a Deemed Marine Licence (DML) (APP-182) and Explanatory Memorandum (APP-183) was submitted as part of the application for development consent by the applicant E.ON Climate and Renewables UK Rampion Offshore Wind Limited. The Explanatory Memorandum describes the purpose of the application draft DCO, and each of its articles and schedules.
- 8.2 The application draft DCO was based (with some differences as detailed in the Explanatory Memorandum) on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.

The applicant's DCO

- 8.3 During the course of the examination, a number of alterations to the application draft DCO were suggested by the applicant and by other interested parties (IPs). In response to these submissions, two sets of questions from the Panel and a series of hearings, the applicant produced seven successive versions of the draft.
- Application version dated March 2013 (APP-182) and Explanatory Memorandum (APP-183);
 - Revision B dated August 2013 (REP-320) including comparison between version 1 and version 2 (REP-322);
 - Revision C dated September 2013 (REP-351) including comparison between version 2 and version 3 (REP-352);
 - Revision D dated October 2013 (REP-387) including comparison between version 1 and version 4 (REP-388);
 - Revision E dated November 2013 (REP-479) including comparison between version 4 and version 5 (REP-480);
 - Revision F dated December 2013 (REP-562) including comparison between version 1 and version 6 (REP-563), and comparison between version 5 and version 6 (REP-564);
 - Revision G dated January 2014 (REP-600) including a comparison between version 1 and version 7 (REP-601);
 - The ExA issued a draft DCO for consultation on 13 December 2013 (REP-561). The applicant then submitted a comparison of version 7 against the ExA's DCO (REP-602) including a schedule of comments on the proposed amendments (REP-603).
- 8.4 At the end of the examination the applicant submitted a final version marked Revision H (REP-633) including a comparison of version 1 and version 8 (REP-634) and comparison between version 7 and version 8 (REP-635). However, it had not accepted the some of the changes suggested by the Panel in its version (REP-561) issued on 13 December 2103 for consultation.
- 8.5 Throughout our consideration of the main issues and representations set out in this report we refer to changes that

have come about as a result of our questions and address matters that have been raised by IPs and provide mitigation and clarification. We do not deal with these matters in detail in this chapter of the report but consider and recommend that, if the SoS decides that development consent should be granted, then it should be in the form we recommend that includes these examination changes.

- 8.6 The majority of the DCO is not the subject of objection or proposed amendments in its final eighth form. We deal with those articles and schedules which are the subject of proposals for further alteration. Taking all important and relevant matters into account our recommended changes to the applicant's eighth draft DCO are set out in the recommended Order (Appendix E) and listed in the Table 8.4.

Summary of changes made in examination by applicant

- 8.7 Changes were made by the applicant to the DCO during the examination in response to matters raised by interested parties and questions from the Panel. The more substantial changes are summarised in the tables below in Tables 8.1 to 8.3 which describe changes to articles, requirements and conditions respectively.
- 8.8 A structural change was made to the draft DCO in the second version (REP-320) when the DML was split into two separate DMLs to cover the Array and the Export cables. This is noted in chapter 2 of this report.
- 8.9 This matter was initially raised by the MMO in its RR (REP-132) where it stated that under Section 72(7) of the Marine and Coastal Access Act 2009 (MCAA), licences can be transferred wholly from one person to another but not transferred partially as was at that stage permitted by the applicant's proposed Article 7. The MMO highlighted that based on the MCAA 2009, should the applicant seek to transfer partial benefits of the DML this would not be permissible without amending the statutory provisions of the MCAA.
- 8.10 The ExA requested further information regarding this matter in the first written questions (PD-005) asking for an update from both the applicant and the MMO. In response, the applicant proposed the creation of two separate DMLs within the DCO, one relating to the 'generation assets' in Schedule 13 and the other to the 'transmission assets' in Schedule 14 (REP-254). The MMO stated in its response to the applicant's written submission that it had agreed to this proposal (REP-338).
- 8.11 At the ISH held on 28/29 August 2013 to consider DCO matters (HR- 012 to HR-018) the Panel sought to clarify the terminology used to describe the two separate DMLs and followed this up with

action points from the hearing (HR-019). In response, the applicant proposed that these titles should be changed to refer to Deemed Licence under Marine and Coastal Access Act 2009 – Array as Schedule 13, and Deemed Licence under Marine and Coastal Access Act 2009 – Export Cables as Schedule 14 (REP-341) and stated that the MMO agreed to its proposal. The MMO confirmed that it agreed in response to the Panel’s second round of written questions (REP-404), stating that the MMO had promoted the use of two separate DMLs from the start of the process.

8.12 Drafting amendments were subsequently made to the DCO to reflect the split of the DML within the terms of the Order and to ensure that all relevant matters had been considered. These amendments were included in the applicant’s draft DCO version B dated August 2013 (REP-320). Numbering of Requirements and Conditions within the draft DCO was changed to reflect the split of the DML as some of the Requirements were moved to Schedule 13 and Schedule 14. Earlier representations from IPs refer to the original numbering and should be read in conjunction with the draft version of the applicant’s DCO at the time of submission. In this report the Panel is using numbering references from the final applicant’s DCO to avoid confusion.

Articles

8.13 The Panel identified where substantive changes were made to the Articles during the examination by the applicant. These Articles are listed in the table below with reference where they are discussed within the report.

Table 8.1 Changes to Articles by applicant during examination.

Article No.	Description	Relates to Schedule No.	Reference
Art. 2	Interpretation		Section on Articles in this chapter.
Art. 7	Benefit of the Order		Section on Articles in this chapter and in chapter 7
Art. 9	Public rights of navigation		Section on Navigation and Risk in chapter 4.
Art. 10	Abatement of works abandoned or decayed		Section on Decommissioning in chapter 4.
Art. 11	Deemed marine licences under the Marine and Coastal Access Act 2009	Schedule 13 and Schedule 14	Section on Articles in this chapter
Art. 13	Crown Rights		Section on Crown

			land in chapter 6
Art. 15	Street works	Schedule 2	Section on Traffic and Transport in chapter 4.
Art. 18	Access to works	Schedule 5	Section on Traffic and Transport in chapter 4.
Art. 37	Felling or lopping of trees and removal of hedgerows	Schedule 10	Section on Landscape and visual impacts in chapter 4.
Art. 38	Trees subject to tree preservation orders	Schedule 11	Section on Landscape and visual impacts in chapter 4.
Art. 40	Certification of plans etc.		Section on Articles in this chapter.

8.14 Articles where substantive changes were made during the examination are discussed below.

Article 2 Interpretation

(i) Commence

8.15 The definition was firstly amended in the applicant's draft DCO revision B (REP-320) to incorporate the changes consequent to the splitting of the one DML into two DMLs.

8.16 In terms of the offshore works, the applicant proposed further amendment to the definition of 'commence' including 'in relation to works seaward of MHWS' in its responses to actions (REP-481) following the ISH on DCO matters held 6/7 November 2013. The MMO confirmed its agreement with the amendment (REP-456).

8.17 In relation to onshore works the SDNPA (REP-505), in its response to actions arising from the same ISH proposed additional wording so that the definition would align with the definition of commencement included at section 56(4) of TCPA 1990. This was discussed further at the ISH on DCO matters held on 5 December 2013 where the SDNPA and the applicant agreed the further amendments to the definition (REP-565).

8.18 WSCC (REP-556) in its response to the actions agreed at the ISH considered that as in section 56(2) of TCPA 1990 (as amended) the definition of 'commence' should include reference to 'demolition work'. This amendment was included in the draft DCO issued by the Panel for consultation on 13 December 2013 (REP-561). The SDNPA (REP-589), WSCC (REP-596) and the applicant (REP-603) confirmed that they were content with this definition.

(ii) Horizontal directional drilling exit compound

8.19 In the applicant's original draft DCO a definition of 'horizontal directional drilling compound' was included. In the ExA first written questions (PD-005), further information was sought on the proposed route of the cable corridor, in particular the location of all proposed horizontal directional drilling sites. In response, the applicant proposed a reference to a 'horizontal directional drilling exit compound' to clarify that an exit compound might be located within works 15 and 19 (REP-254). These references were added to Schedule 1, Part 1 for clarification in revision B of the applicant's draft DCO (REP-320).

8.20 A definition was proposed by the applicant in 'Schedule of changes to the Draft DCO' version 2 (REP-354) to reflect the amendments to Schedule 1 Part 1 and was included in the draft DCO revision B.

(iii) Maintain

8.21 The original wording proposed by the applicant was not agreed by the MMO in its SoCG with the applicant (REP- 240), where it proposed that the applicant should remove reference to 'reconstruct, replace, alter and adjust' and requested further discussion between the parties. The ExA asked for further information regarding this matter in its first round written questions. In response (REP-254) the applicant proposed a form of words previously adopted in the Triton Knoll Offshore Wind Farm Order 2013.

8.22 This issue was further discussed at the ISH on DCO and DML matters held on 28/29 August 2013 (HR-012 to HR-018) and an action point was issued inviting the parties to continue discussions (HR-019). Agreement was reached between the MMO and the applicant in 'Update in Matters not Agreed with the MMO and applicant' (as of 2 December 2103) (REP-539) and the revised definition is included in the applicant's draft DCO version H.

(iv) Relevant planning authority

8.23 The SDNPA highlighted the point that the proposed interpretation of the term 'relevant planning authority' only identified WSCC as the relevant authority. The SDNPA argued that the definition should be amended so that the SDNPA would be acknowledged as the statutory authority for relevant matters related to land within the boundaries of the South Downs National Park (REP-331). Further examination of this matter was held at the ISH on DCO and DML on 28/29 August 2013 (HR-012 to HR-018). A resulting action point (HR-019) requested the SDNPA and WSCC to consider the possibility of a joint decision making arrangement. However, this agreement was not forthcoming, as submitted by both the SDNPA (REP-358) and WSCC (REP-359). The SDNPA stated that a joint decision making arrangement 'was not feasible given the

need for democratic accountability and the governance structure of the SDNPA’.

8.24 Further examination of the matter through written questions and at hearings resulted in the applicant proposing wording which identified three relevant authorities in relation to Requirements 9-41 of the applicant’s draft DCO. In response to actions issued following the DCO ISH held on 6 November 2013 (HR-058), both WSCC and the SDNPA agreed to this wording and specified the requirements for which they would be the discharging authority (WSCC, REP-509)(SDNPA, REP-505).⁵⁵ Mid Sussex District Council (MSDC) was also included in the interpretation of ‘relevant planning authority’ as it has responsibility for matters concerned with the decommissioning of the onshore substation near Bolney. MSDC confirmed its agreement to the definition in a letter dated 27 November 2013 (REP-501).

8.25 This agreed wording is included in the applicants DCO version, Revision H (REP-633).

Article 7 Benefit of the Order

8.26 Article 7 was amended during the examination as a result of discussions between the MMO and the applicant and questions from the Panel. The Article was amended to reflect the inclusion of 2 DML’s within the DCO and to address the MMO concerns relating to the enforcement following transfer of the benefit or grant of a lease of a DML. This is discussed in section on Financial and technical viability in chapter 4.

Article 40 Certification of plans etc

8.27 Article 40 of the recommended DCO lists the works plan, the land plan and other statements and plans that the applicant shall submit to the SoS, if consent is granted, as soon as practically possible after the Order is made.

8.28 The Panel had regard to representations from IPs and asked a number of questions both through the ExA written questions and during the hearings. All relevant and important matters were thoroughly examined during the examination. A series of outline management plans, including a number of plans not included in the applicant’s initial submitted draft DCO, were submitted during the examination. These documents were provided to demonstrate how relevant mitigation measures would be secured through the proposed DCO requirements. These outline management plans

⁵⁵ These representations from IPs refer to the original numbering and should be read in conjunction with the draft version of the applicant’s DCO at the time of submission.

and other documents were all specified in the provisions of the applicant's final draft DCO, Revision H (REP-633). The fully developed detailed versions of these documents are reserved for subsequent approval in the discharge of the relevant requirements. The detailed documents are required under the terms of the Order to be in conformity with the outline versions certified within the DCO.

Requirements

- 8.29 The Panel identified where substantive changes were made to the Requirements during the examination by the applicant. These Requirements are listed in the table below with reference where they are discussed within the report.

Table 8.2 Changes made to proposed requirements by applicant during the examination⁵⁶

Req. No.	Description	Reference
Req. 2 -5	Detailed offshore design parameters	Section on Landscape and visual impacts in chapter 4.
Req. 6	Base Port Travel Plan	Section on Traffic and Transport in chapter 4.
Req. 7	Lighting	Section on Civil and Military Aviation and Defence in chapter 4.
Req. 10	Design approval onshore	Section on Landscape and visual impacts in chapter 4.
Req. 11	Provision of landscaping	Section on Landscape and visual impacts in chapter 4.
Req. 12	Implementation and maintenance of landscaping	Section on Landscape and visual impacts in chapter 4.
Req. 13	Highway access	Section on Traffic and Transport in chapter 4.
Req. 14	Permanent highway access in the South Downs National Park	Section on Traffic and Transport in chapter 4.
Req. 15	Public Rights of Way	Section on Traffic and Transport in chapter 4.
Req. 16	National Trail in the South Downs National Park	Section on Traffic and Transport in chapter 4.
Req. 17	Fencing and other means of enclosure	Section on Landscape and visual impacts in chapter 4

⁵⁶ In this table, blue indicates a new requirement and red indicates a word has been removed.

Req. 18	Temporary fencing in the South Downs National Park	Section on Landscape and visual impacts in chapter 4.
Req. 22	Flood Risk	Section on Marine and Coastal Physical processes in chapter 4.
Req. 23	Archaeology	Section on Historic environment in chapter 4.
Req. 24	Archaeology in the South Downs National Park	Section on Historic environment in chapter 4.
Req. 25	Scheduled Monument at Tottington Mount	Section on Historic environment in chapter 4.
Req. 26	Construction Environmental Management Plan (CEMP)	Section on Effects of Construction and Operation in chapter 4.
Req. 28	Ecological and landscape management plan (ELMP)	Sections on Landscape and visual impacts and Biodiversity in chapter 4.
Req. 29	Ecological and landscape management plan for the South Down National Park	Sections on Landscape and visual impacts and Biodiversity in chapter 4.
Req. 30	Construction health, safety and environmental plan	Section on Effects of Construction and Operation in chapter 4.
Req. 31	Construction Traffic Management Plan (CTMP)	Section on Traffic and Transport in chapter 4.
Req. 32	Construction hours	Section on Effects of Construction and Operation in chapter 4.
Req. 33	External lighting and control of artificial light emissions	Section on Effects of Construction and Operation in chapter 4.
Req. 34	External lighting in the South Down National Park	Section on Effects of Construction and Operation in chapter 4.
Req. 35	Control of noise during construction	Section on Effects of Construction and Operation in chapter 4.
Req. 36	Control of noise during operational phase	Section on Effects of Construction and Operation in chapter 4.
Req. 37	European protected species onshore	Section on Biodiversity in chapter 4.
Req. 38	European protected species within South Downs National Park	Section on Biodiversity in chapter 4.

Req. 39	Restoration of land used temporarily for construction	Sections on Landscape and visual impacts and Biodiversity in chapter 4.
Req. 40	Restoration of land within the South Down National Park used temporarily for construction	Sections on Landscape and visual impacts and Biodiversity in chapter 4.
Req. 41	End of operational life plan	Section on Decommissioning in chapter 4.

Schedule 13 and 14 Conditions

8.30 The Panel identified where substantive changes were made to the Conditions in Schedule 13 and Schedule 14 during the examination by the applicant. These Conditions are listed in the table below with reference where they are discussed within the report.

Table 8.3 Changes made to conditions in Schedule 13 and in Schedule 14 by applicant during the examination⁵⁷

Cond. No.	Description in Schedule 13	Reference
Cond. 1-4	Design parameters	Section on Landscape and visual impacts in chapter 4.
Cond. 6	Navigational practice, safety and emergency response	Moved from requirements to conditions with minor changes after the DML split and is discussed in Navigation and Risk section in chapter 4.
Cond. 7-8	Aids to navigation	Moved from requirements with changes and additions after the DML split and is it discussed in Navigation and Risk section in chapter 4.
Cond. 9	Chemicals, drilling and debris	Section on Marine and Coastal Physical processes in chapter 4.
Cond. 11	Pre-construction plans and	Sections on

⁵⁷ In this table, blue indicates a new green indicates a condition has been moved.

	documentation	Biodiversity, Landscape and visual impacts, Navigation and Risk and Marine and Coastal Physical processes in chapter 4.
Cond. 15	Pre-construction monitoring and surveys	Section on Biodiversity in chapter 4.
Cond. 16	Construction monitoring	Section on Biodiversity in chapter 4
Cond. 17	Post construction surveys	Section on Biodiversity in chapter 4. and Marine and Coastal
Cond. 18	Black bream spawning	Section on Biodiversity in chapter 4.
Cond. 19	Herring spawning	Section on Biodiversity in chapter 4.
Cond. 20	Restrictions on monopile foundations	Section on Biodiversity in chapter 4.
Cond. 21	Monitoring of shoreline sediment morphology	Section on Marine and Coastal Processes in chapter 4.
Cond. 22	Decommissioning	Section on decommissioning in chapter 4

Cond. No.	Description in Schedule 14	Reference
Cond. 3	Design parameters	Section on Navigation and Risk in chapter 4
Cond. 6	Navigational practice, safety and emergency response	Moved from requirements to conditions with minor changes after the DML split and is discussed in Navigation and Risk section in chapter 4.
Cond. 7	Aids to navigation	Moved from requirements with changes and additions after the DML split and is it discussed in Navigation and Risk section in chapter 4.
Cond. 9	Chemicals, drilling and debris	Section on Marine and Coastal Processes in chapter 4.
Cond. 11-12	Pre-construction plans and documentation	Sections on Biodiversity, Landscape and Visual, Navigation

		and Risk and Marine and Coastal Physical processes in chapter 4.
Cond. 15	Pre-construction monitoring and surveys	Section on Biodiversity in chapter 4.
Cond. 16	Construction monitoring	Section on Marine and Coastal Physical Processes in chapter 4 and chapter 5.
Cond. 17	Post construction surveys	Section on Marine and Coastal Processes in chapter 4.
Cond. 18	Decommissioning	Section on decommissioning in chapter 4.

The Panel's Recommended Order

- 8.31 The ExA issued a draft DCO including amendments proposed by the Panel for consultation on 13 December 2013 (REP-561). The applicant then submitted a comparison of its draft version 7 against the Panel's version of the draft DCO (REP-602) including a schedule of comments regarding the ExA's proposed amendments (REP-603).
- 8.32 The Panel considered the submission by the applicant (REP-603) alongside submissions from other IPs, taking all important and relevant matters into account. After assessing the various submissions the Panel produced the recommended Order included at Appendix E to this report for consideration by the SoS. A number of changes to the applicant's final DCO that forms the Panel's recommended Order are described in Table 8.4 below.

Table 8.4 The Panel's recommended amendments to the applicant's final draft DCO

No.	Reference	Panel's proposed Amendments	Reasoning/ reference to reasoning for the amendment
1	Article 2. Interpretation	Insertion in Article 2: " <i>competent authority</i> " means the competent authority as defined in Regulation 7 of the Conservation of Habitats and Species Regulations 2010/490	To reflect the wording in Article 39 regarding deemed consent for HRA matters.

2	Article 7. Benefit of the Order;	Insertion in Article 7(4)(b): <i>or lessee</i>	To secure clarity and consistency with other references in Article 7 and to ensure that the exceptions in 7(4)(b) apply where a lease has been granted as intended by the parties. See chapter 7 Compulsory Acquisition
3	Article 37. Felling or lopping of trees and removal of hedgerows	Insertion in Article 37(1) and 37(4)(a) : <i>requirement 11(provision of landscaping)</i>	To give effect to the amendment in Requirement 11 Provision of landscaping
4	Article 39. Procedure in relation to further approvals, etc.	Insertion in Article 39(3): <i>An exception to this provision shall be made in the case of any application that is considered by the competent authority as requiring an appropriate assessment under the UK Habitats Regulations.</i>	Amended to satisfy Natural England in the event a DCO requirement or DML condition relating to the discharge of the obligation in connection with a European site is included in any authorisation for the project
5	Article 39. Procedure in relation to further approvals, etc.	Insertion in Article 39(4): <i>An exception to this provision shall be made in the case of any application that is considered by the competent authority as requiring an appropriate assessment under the UK Habitats Regulations.</i>	Amended to satisfy Natural England in the event a DCO requirement or DML condition relating to the discharge of the obligation in connection with a European site is included in any authorisation for the project
6	Schedule 1, Part 3 Requirements, Requirement 11 Provision of landscaping	Insertion in Requirement 11(2): (h) <i>details of existing trees and hedgerows to be removed and justification for their removal, including evidence to show that their removal is the only practicable course of action;</i>	Amended to include a positive provision that takes as its starting point, the retention of trees and hedges specifically in relation to the Bolney substation given the importance of those features in

			screening the proposed substation. Section on Landscape and visual impacts in chapter 4.
7	Schedule 1, Part 3 Requirements, Requirement 31 Construction traffic management plan	Insertion in Requirement 31(2)(g): <i>...and construction laydown areas</i>	Drafting change to ensure that the CTMP also applies to construction laydown areas. Section on Traffic and transport in chapter 4.
8	Schedule 1, Part 3 Requirements, Requirement 41: Onshore decommissioning	Title of the requirement changed to: <i>Onshore decommissioning.</i> Insertion in Requirement 42: <i>Upon the cessation of commercial operation of the onshore substation works (described in Schedule 1 to the Order and identified in the Works Plan as Work No. 25), a scheme for the demolition and removal of the relevant works and restoration of the substation site to its previous land use and condition as agricultural land, including a proposed timetable, shall be submitted to Mid Sussex District Council for its approval following consultation with Natural England. Following its approval the scheme shall be carried out in accordance with the approved details and timetable unless otherwise agreed in writing by Mid Sussex District Council</i>	To ensure effective provision for decommissioning of the onshore substation when the projects operational need for it has ceased. This in the interests of environmental mitigation and to avoid any risk of cost liabilities for site reclamation and remediation falling to the public purse in the longer term. Section on decommissioning in other matters in chapter 4.
9	Schedule 1, Part 3 Requirements, Requirement 41: Onshore decommissioning	Deletion in Requirement 42: <i>(2) 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>	To incorporate the changes above

10	Schedule 1, Part 3 Requirements, Requirement 41: Onshore decommissioning	Deletion in Requirement 42: (3) <i>The scheme under paragraph (2) shall be implemented as approved.</i>	To incorporate the changes above
11	Schedule 13, Part 2 Conditions, Condition 11 Pre-construction plans and documentation	Insertion in Condition 11(a): <i>...prepared having regard to the need to- (i) Limit as far as possible the horizontal degree of view of wind turbine generators from the South Downs National Park and the Sussex Heritage Coast; (ii) Increase as far as possible the distance of the wind turbine generators from the South Downs National Park and the Sussex Heritage Coast; (iii) Locate the largest turbines, in any hybrid scheme, to the south-western portion of the Order limits; and (iv) Provide clear sight lines through the wind turbine layout in order that the regular geometric pattern of the array is apparent in views from the South Downs National Park and Sussex Heritage Coast.</i>	Redrafted to provide further mitigation of the effects of the off shore wind farm on seaward views from the National Park and Heritage Coast. The reasoning behind this change is discussed at length in the Landscape and Visual section of chapter 4.
12	Schedule 13, Part 2 Conditions, Condition 11 Pre-construction plans and documentation	Moved from Condition 11(a) to 11(a)(iv): <i>to be agreed in writing with the MMO in consultation with Trinity House and the MCA which shows-</i>	To give effect to changes to Condition 11
13	Schedule 13, Part 2 Conditions, Condition 11 Pre-construction plans and documentation	Insertion in Condition 11(a)(v): <i>...parameters, the principles in (i)-(iv) have been taken into account</i>	To give effect to changes in Condition 11

14	Schedule 13, Part 2 Conditions, Condition 11: Pre-construction plans and documentation;	Deletion in Condition 11(a)(i): ... <i>the view from the Sussex Heritage Coast, in terms of separation or limiting of the horizontal field of view, has been taken into account</i>);	Removed given amended drafting of Condition 11.
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Protective Provisions

- 8.33 The position in relation to the four applications made by the applicant under s127 of the PA2008 in parallel with the examination of its DCO application is considered at paragraph 7.84 et seq. Protective provisions were negotiated between the applicant and the relevant statutory undertakers and in consultation with other relevant interested parties (including GSK).
- 8.34 As explained in chapter 7, the protective provisions were agreed by all the statutory undertakers. GSK maintained an objection pending completion of the crossing agreement that had been negotiated with the applicant.

Other legal agreements

- 8.35 WSCC and the applicant completed a draft s106 agreement under the Town and Country Planning Act 1990 (as amended) (REP-621). This is discussed in the sections on biodiversity and landscape and visual impacts in chapter 4
- 8.36 Throughout the examination the SDNPA and the applicant attempted to come to a s106 agreement. However, no agreement was reached and the applicant submitted a Unilateral Undertaking (REP-622). This is discussed in the sections on landscape and visual impacts, and biodiversity in chapter 4.
- 8.37 The applicant also signed an agreement with Navitus Bay Development Ltd providing for a joint approach to the mitigation of cumulative noise impacts on Marine Mammals with regard to the construction of the Rampion and Navitus Bay OWFs to cater for the eventuality that construction works for the projects overlap (REP-383). This is discussed in the section on biodiversity in chapter 4 and in chapter 5.

Conclusion

- 8.38 Subject to the modifications proposed above and as set out in Appendix E, the Panel considers the recommended Order to be acceptable having regard to all matters forming part of the application, the development sought and put before us at the examination.

- 8.39 We consider that the measures contained in the planning and development consent obligations secured by the s106 agreement with WSCC would provide mitigation for the adverse effects of the proposed development within the area which is the responsibility of WSCC and the other planning authorities it represents.
- 8.40 We consider the UU proposed by the applicant for the SDNPA provides some mitigation for the adverse effects of the development but is inadequate in a number of respects. However the Panel considers that this is not sufficient enough to justify refusal of the Order in consideration of the benefits of the Order.

9 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Overall Conclusions

- 9.1 In coming to our overall conclusions, the Panel has had regard to the matters listed in s104(2) of the Planning Act 2008 (PA2008).
- 9.2 For the reasons set out in the previous chapters of this report, that the proposals have had regard to;
- Marine policy documents
 - The joint LIR submitted by West Sussex County Council, Horsham District Council, Mid Sussex District Council, Adur District Council and Worthing Borough Council
 - the LIR submitted by Brighton and Hove City Council
 - the LIR submitted by South Downs National Park Authority
- 9.3 The Panel concludes, for the reasons set out in the previous chapters of this report, that the proposal would accord with NPS EN-1, EN-3 and EN-5.
- 9.4 Section 104(3) of PA2008 requires that the application must be decided in accordance with any relevant NPSs, unless one or more of the exceptions in s104(4) to (8) applies.
- 9.5 We have considered the application against the test set out by s104(7) of PA2008 and conclude, for the reasons stated in this report, that any adverse impacts of the proposed development would not outweigh its benefits. Our conclusions regarding policy and factual issues are set out in chapter 4 and regarding habitats in chapter 5. Our overall conclusions regarding the case for development consent are presented in chapter 6.
- 9.6 As to the other exceptions referred to in s104, the Panel finds no reason to consider that deciding the application in accordance with the relevant NPSs would:
- lead to the United Kingdom being in breach of its international obligations;
 - lead the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment, or
 - be otherwise unlawful by virtue of any enactment.
- 9.7 The Panel has considered the effects that the proposal would be likely to have upon all potentially affected European and Ramsar sites. The Habitats Regulations Assessment (HRA) is a matter for the Secretary of State as the competent authority for the proposal. As a basis for our advice regarding this matter to the SoS we conclude that the only European site for which there is a possible likely significant effect after mitigation of indirect effects on prey species is the Flamborough Head and Bempton Cliffs (FHBC) SPA, where it is uncertain as to whether an adverse effect

on the integrity of that European site may be ruled out when collision risk for gannets and kittiwake from the Rampion project is taken into account in combination with the effects of other relevant plans and projects.

- 9.8 There was disagreement between the applicant and NE regarding whether doubt exists as to the absence of an adverse effect on the integrity of the FHBC SPA. Natural England maintained that it is not possible to exclude a possible likely significant effect while the applicant considered that it was possible to rule out an adverse effect. The Panel agrees with NE that on the basis of the information regarding in combination effects before us it is not possible to rule out the possibility of a likely significant effect on integrity.
- 9.9 On this basis the Panel concludes that an appropriate assessment will be required and that the examination has provided sufficient information for this to be carried out. The relevant statutory and regulatory bodies were informed that the consultation on the RIES may be relied upon by the SoS as consultation under Regulation 61(3) of the Habitats Regulations this is discussed in chapter 5 of this report.
- 9.10 The Panel considers the application for CA and temporary possession and use powers in chapter 7 and concludes that there is a compelling case in the public interest for the compulsory acquisition powers proposed, together with the other associated powers. The Panel sees no reason to vary in any way the provisions of the Order in relation to compulsory acquisition and temporary possession and use powers

Recommendation

- 9.11 In the light of the Panel's conclusions regarding the tests set out in s104 of PA2008, all relevant and important matters, including the merits of the case for the development proposed and the compulsory acquisition of land and rights, the Panel recommends that an Order granting development should be made in the form annexed to this report at Appendix E.
- 9.12 In reaching our conclusion that development consent should be granted and that the provisions of the recommended Order in relation to compulsory acquisition should be confirmed, the Panel has taken into account not only what we consider to be the principal or key issues but also all other matters raised in the representations made during the examination. The Panel found no matters to be of such importance that they would individually or collectively lead us to a recommendation different to that set out above.

APPENDIX A - EXAMINATION LIBRARY

Original Application Documents

APP-001	<u>1.1 Cover letter to the Planning Inspectorate March 2013</u>
APP-002	<u>1.2 Application Form</u>
APP-003	<u>1.3 Copies of Newspaper Notices</u>
APP-004	<u>2.1 Location Plan</u>
APP-005	<u>2.2 Land Plan Key Plan</u>
APP-006	<u>2.2.1 Offshore Land Plan</u>
APP-007	<u>2.2.2 Onshore Land Plans Sheets 1 - 12</u>
APP-008	<u>2.3.1 Offshore Land Affected Plan</u>
APP-009	<u>2.3.2 Onshore Land affected plan key plan and sheets 1 - 12</u>
APP-010	<u>2.4 Special Category Land plan key plan and sheets 1 -2</u>
APP-011	<u>2.5 Works Plan - Key Plan</u>
APP-012	<u>2.5.1 Offshore Works Plan</u>
APP-013	<u>2.5.2 Onshore Works Plan sheets 1 - 12</u>
APP-014	<u>2.6 Order Limits and Grid Coordinates plan - Key plan</u>
APP-015	<u>2.6.1 Offshore Order limits and grid coordinates plan</u>
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**Development Consent Order
Received with Application**

APP-182	<u>3.1 Development Consent Order March 2013</u>
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APP-183 3.2 Explanatory Memorandum March 2013

**Development Consent Order
Received for Deadline II**

REP-320 E.ON - Draft DCO (Version 2)
REP-321 E.ON - Schedule of Changes to DCO
REP-322 E.ON - DCO comparison Version 1 (March 2013) and Version 2
(August 2013)

**Development Consent Order
Received for Deadline IV**

REP-351 E.ON DCO Version 3 (Appendix 1a)
REP-352 E.ON DCO Comparison Version 2 (August 2013) and Version 3
(September 2013) (Appendix 1b)
REP-353 E.ON - Appendix 7 - List of document submissions and discharging
bodies for the DCO and DML
REP-354 E.ON Schedule of changes to the draft DCO (Version 2)

**Development Consent Order
Received for Deadline VII**

REP-387 E.ON - Draft DCO (Version 4 - October 2013) (clean)
REP-388 E.ON - Comparison of draft DCO (version 1 and version 4)
REP-389 E.ON - Discharge of requirements in the draft DCO
REP-390 E.ON - Schedule of changes to the draft DCO and DMLs (version 3)

**Development Consent Order
Received for Deadline IX**

REP-479 E.ON - Appendix 1 - draft DCO version 5
REP-480 E.ON - Appendix 2 - comparison between Version 4 (October
2013) and Version 5 (November 2013) of the DCO

**Development Consent Order
Received for Deadline XI**

REP-561 ExA Draft Development Consent Order Version 5 (DCO)
REP-562 E.ON - Appendix 1 - Draft DCO (Version 6 - December 2013)
REP-563 E.ON - Appendix 2 - Comparison of Version 6 (December 2013) of
the Draft DCO with Version 1 (March 2013)
REP-564 E.ON - Appendix 3 - Comparison of Version 6 (December 2013) of
the Draft DCO with Version 5 (November 2013)

**Development Consent Order
Received for Deadline XII**

REP-600 E.ON - Appendix 1 - Draft DCO version 7
REP-601 E.ON - Appendix 2 - Comparison of version 7 of Draft DCO with
version 1
REP-602 E.ON - Appendix 3 - Comparison of version 7 of Draft DCO with

REP-603 the Examining Authority's draft of Dec 2013
E.ON - Appendix 4 - Schedule of comments on the Examining Authority's draft DCO

**Development Consent Order
Received for further Deadline of 18 January 2014 – Response to Rule 17 Request**

REP-633 E.ON - Appendix 1 - Draft Development Consent Order Version 8
REP-634 E.ON - Appendix 2 - Comparison between Version 1 and Version 8 of Development Consent Order
REP-635 E.ON - Appendix 3 - Comparison between Version 7 and Version 8 of Development Consent Order

**Updated Application Documents
Received for Deadline II**

REP-310 E.ON - BoR Part 1 - Updated August 2013 (clean version) - (late submission)
REP-311 E.ON - BoR Part 1 -Update August 2013 (with tracks) - (late submission)
REP-312 E.ON - BoR Part 2 - Update August 2013 (clean version) - late submission)
REP-313 E.ON - BoR Part 2 - Update August 2013 (with tracks) - (late submission)
REP-314 E.ON - BoR Part 3 -Update August 2013 (clean version) - (late submission)
REP-315 E.ON - BoR Part 3 - August 2013 (with tracks) - (late submission)
REP-316 E.ON - BoR Part 4 - Update August 2013 (clean version) - (late submission)
REP-317 E.ON - BoR Part 4 - Update August 2013 (with tracks) - (late submission)
REP-318 E.ON - BoR Part 5 and Schedule -Update August 2013 (clean version) - (late response)
REP-319 E.ON - BoR Part 5 and Schedule - Update August 2013 (with tracks) - (late submission)

**Updated Application Documents
Received for Deadline VIII**

REP-457 E.ON - Response to Rule 17 Request on Book of Reference updates, 2013
REP-458 E.ON - Schedule of Changes to the BoR November 2013

**Updated Application Documents
Received for Deadline X**

REP-527 E.ON - Appendix 5 Rampion Book of Reference Part 1 - December 2013 clean
REP-528 E.ON - Appendix 5 Rampion Book of Reference Part 1 - December 2013 tracked
REP-529 E.ON - Appendix 5 Rampion Book of Reference Part 2 - December 2013 clean
REP-530 E.ON - Appendix 5 Rampion Book of Reference Part 2 - December 2013 tracked
REP-531 E.ON - Appendix 5 Rampion Book of Reference Part 3 - December

	<u>2013 clean</u>
REP-532	<u>E.ON - Appendix 5 Rampion Book of Reference Part 3 - December 2013 tracked</u>
REP-533	<u>E.ON - Appendix 5 Rampion Book of Reference Part 4 - December 2013 clean</u>
REP-534	<u>E.ON - Appendix 5 Rampion Book of Reference Part 5 and Schedule - December 2013 clean</u>
REP-535	<u>E.ON - Appendix 5 Rampion Book of Reference Part 5 and Schedule - December 2013 tracked</u>
REP-536	<u>E.ON - Appendix 5 - Explanatory Note for Book of Reference (5 December 2013)</u>
REP-537	<u>E.ON - Appendix 5 - Schedule of Changes to the Book of Reference (Version 2 - Version 3)</u>

Updated Application Documents Received for Deadline XII

REP-606	<u>E.ON - Appendix 7 - Book of Reference Part 1- Version 4 (Clean version)</u>
REP-607	<u>E.ON - Appendix 7 - Book of Reference Part 1- Version 4 (Tracked version)</u>
REP-608	<u>E.ON - Appendix 7 - Book of Reference Part 2- Version 4 (Clean version)</u>
REP-609	<u>E.ON - Appendix 7 - Book of Reference Part 2- Version 4 (Tracked version)</u>
REP-610	<u>E.ON - Appendix 7 - Book of Reference Part 3- Version 4 (Clean version)</u>
REP-611	<u>E.ON - Appendix 7 - Book of Reference Part 3- Version 4 (Tracked version)</u>
REP-612	<u>E.ON - Appendix 7 - Book of Reference Part 4- Version 4 (Clean version)</u>
REP-613	<u>E.ON - Appendix 7 - Book of Reference Part 4- Version 4 (Tracked version)</u>
REP-614	<u>E.ON - Appendix 7 - Book of Reference Part 5 and Schedule- Version 4 (Clean version)</u>

Project Documents Procedural Decisions

PD-001	<u>Acceptance decision letter</u>
PD-002	<u>S51 Letter</u>
PD-003	<u>S55 checklist</u>
PD-004	<u>Rule 6 and 4 letter</u>
PD-005	<u>Rule 8 Letter</u>
PD-006	<u>ExA 2nd Questions</u>
PD-007	<u>Rule 17 Letter 21 October 2013</u>
PD-008	<u>Rule 17 Letter 13 January 2014</u>
PD-009	<u>Letter to Jenny Driver</u>
PD-010	<u>Letter to John Simon Birkby</u>
PD-011	<u>Letter to Jenny Birkby</u>
PD-012	<u>Letter to Rachel Lesley Meates</u>
PD-013	<u>Letter (1) to Paine Contractors Ltd</u>
PD-014	<u>Letter (2) to Paine Contractors Ltd</u>
PD-015	<u>Letter to Janet Irving</u>
PD-016	<u>Letter to Peter Elvet Lewis</u>

PD-017	<u>Letter to Helena Francis Lewis</u>
PD-018	<u>Letter to John Geoffrey Cousins</u>
PD-019	<u>Letter to Olga Cousins</u>
PD-020	<u>Letter to Paine Contractors Ltd confirming IP status</u>
PD-021	<u>Letter to Guernsey</u>
PD-022	<u>Letter to Scottish Natural Heritage</u>
PD-023	<u>Letter to Guernsey (2)</u>
PD-024	<u>Notification of issue of RIES and draft DCO</u>
PD-025	<u>s99 Letter</u>

Responses to Procedural Decisions

PD-026	<u>Reply from Scottish Natural Heritage</u>
PD-027	<u>Response from Guernsey</u>

Certificates

PD-028	<u>Reg 13 Certificate</u>
PD-029	<u>s56 cover letter</u>
PD-030	<u>s56 Notice</u>
PD-031	<u>s58 Certificate</u>
PD-032	<u>s59 Certificate</u>
PD-033	<u>Letter notifying of further published documents – 7 March 2014</u>

Representations

Adequacy of Consultation Representations

REP-001	<u>Chichester District Council</u>
REP-002	<u>West Sussex County Council</u>
REP-003	<u>Horsham District Council</u>
REP-004	<u>Brighton and Hove City Council</u>
REP-005	<u>East Sussex County Council</u>
REP-006	<u>Lewes District Council</u>
REP-007	<u>Tandridge District Council</u>
REP-008	<u>Hampshire County Council</u>
REP-009	<u>South Downs National Park Authority</u>
REP-010	<u>Crawley Borough Council</u>
REP-011	<u>Mid Sussex District Council</u>

Relevant Representations

REP-012	<u>Adur & Worthing Councils</u>
REP-013	<u>Alan Diplock</u>
REP-014	<u>Alec Roy Coppard</u>
REP-015	<u>Amber Watkin</u>
REP-016	<u>Andrew Barnett</u>
REP-017	<u>Andrew Coleman</u>
REP-018	<u>Anne Carter</u>
REP-019	<u>Anne Weinhold</u>
REP-020	<u>Annette Livings</u>
REP-021	<u>Annie Gilbert</u>
REP-022	<u>Anthony Saunders</u>

REP-023 [Antony Thorpe](#)
REP-024 [Arthur Hepher](#)
REP-025 [Barbara Hepher](#)
REP-026 [Barry Gore](#)
REP-027 [Bolney Parish Council](#)
REP-028 [Brian Judge](#)
REP-029 [Brian Williams](#)
REP-030 [Brighton & Hove City Council](#)
REP-031 [Brighton & Hove Friends of the Earth](#)
REP-032 [Brighton & Newhaven Fish Sales Ltd](#)
REP-033 [Brighton Charter Fishing Limited](#)
REP-034 [Brinder](#)
REP-035 [British Telecom](#)
REP-036 [Bruce Gibson](#)
REP-037 [C.R.Weaver](#)
REP-038 [Campaign for National Parks](#)
REP-039 [Caroline Murphy](#)
REP-040 [Charles Carter](#)
REP-041 [Charles Gordon-Seymour](#)
REP-042 [Charles Worsley](#)
REP-043 [Chris Leach](#)
REP-044 [Christopher Goss](#)
REP-045 [Christopher Hammond](#)
REP-046 [Christopher Hardy](#)
REP-047 [Cliff Dargonne](#)
REP-048 [Clive Hackney](#)
REP-049 [Clive Morris](#)
REP-050 [Clive Neil-Smith](#)
REP-051 [Cllr Donna Edmunds](#)
REP-052 [Cllr. Keith Bickers](#)
REP-053 [Colin Child](#)
REP-054 [Crawley Borough Council](#)
REP-055 [Cyndy Downie](#)
REP-056 [Dan McCormick](#)
REP-057 [Daniel Rathbone](#)
REP-058 [David Downey](#)
REP-059 [David Henry Amhurst Tufnell](#)
REP-060 [David Rogers](#)
REP-061 [David Samuel](#)
REP-062 [David Sexton](#)
REP-063 [David Simpson](#)
REP-064 [David Steer](#)
REP-065 [David Swaysland](#)
REP-066 [Defence Infrastructure Organisation](#)
REP-067 [Dive125](#)
REP-068 [Dr Charles M. Goldie](#)
REP-069 [Dr G Lickfold](#)
REP-070 [Dr Karen Henderson and Dr Fraser Duncan](#)
REP-071 [Dr Peter Jones](#)
REP-072 [E. Pile](#)

REP-073 [East Sussex County Council](#)
REP-074 [Emma Louise Norris](#)
REP-075 [English Heritage](#)
REP-076 [Enterprise Fisheries Limited](#)
REP-077 [Environment Agency](#)
REP-078 [Fatih Kariem](#)
REP-079 [Ferring Conservation Group](#)
REP-080 [Friends of the Earth](#)
REP-081 [G Pile](#)
REP-082 [G C Williams](#)
REP-083 [Gary Edwards](#)
REP-084 [Gavin Ayling](#)
REP-085 [Geoff King](#)
REP-086 [GlaxoSmithKline](#)
REP-087 [Graham Beaver](#)
REP-088 [H Lewis](#)
REP-089 [Hampshire County Council](#)
REP-090 [Harry Linfield](#)
REP-091 [Henfield Parish Council](#)
REP-092 [Highways Agency NDD SE](#)
REP-093 [Horsham District Council](#)
REP-094 [Hove Civic Society](#)
REP-095 [Ian Leslie](#)
REP-096 [Ian White](#)
REP-097 [Isabelle Anderson](#)
REP-098 [J E Rimmington](#)
REP-099 [J Openshaw](#)
REP-100 [Janet Sutton](#)
REP-101 [Jason Kilburn Evans](#)
REP-102 [Jason May](#)
REP-103 [Jason Smith](#)
REP-104 [Jax Atkins](#)
REP-105 [Jeff Livings](#)
REP-106 [Joanna Shackleton](#)
REP-107 [John Clark](#)
REP-108 [John Joseph Armstrong](#)
REP-109 [John Stockdale](#)
REP-110 [Jonathan Campbell](#)
REP-111 [Jonathan Gwyn](#)
REP-112 [Jonathan Simon Markwick](#)
REP-113 [Joseph Ashley](#)
REP-114 [Joseph Lewis](#)
REP-115 [Joseph Miller](#)
REP-116 [Julia Watts](#)
REP-117 [K Baker](#)
REP-118 [Katherine Anne Hirst](#)
REP-119 [Kingston Parish Council](#)
REP-120 [L G Smith](#)

REP-121 [L.H.Aslett](#)
REP-122 [Lars Welander](#)
REP-123 [Laurence Tondelier](#)
REP-124 [Leila McCormick](#)
REP-125 [Lewes District Council](#)
REP-126 [Linda Tait](#)
REP-127 [Littlehampton Commercial Fishermens Association](#)
REP-128 [Lorna Elizabeth Tinworth](#)
REP-129 [Lucy Sheridan](#)
REP-130 [Lucy Todd](#)
REP-131 [Malcolm Brett](#)
REP-132 [Marine Management Organisation](#)
REP-133 [Marion Armstrong](#)
REP-134 [Maritime & Coastguard Agency](#)
REP-135 [Mark McCullough](#)
REP-136 [Martin Fuller](#)
REP-137 [Martin Winbow](#)
REP-138 [Mary Campbell](#)
REP-139 [Mary Funnell](#)
REP-140 [Matt James-Evans](#)
REP-141 [Micael Tanner](#)
REP-142 [Michael Allen](#)
REP-143 [Michael Ray](#)
REP-144 [Mid Sussex District Council](#)
REP-145 [Mike Croker](#)
REP-146 [Monika MacDonald](#)
REP-147 [Monteum Limited](#)
REP-148 [National Federation of Fishermens Organisation](#)
REP-149 [National Grid Electricity Transmission Plc](#)
REP-150 [National Trust](#)
REP-151 [NATS En Route LTD](#)
REP-152 [Natural England](#)
REP-153 [Network Rail Infrastructure Limited](#)
REP-154 [Newhaven and Seaford Sailing Club](#)
REP-155 [Newhaven Fish & Flake Ice Society Ltd](#)
REP-156 [Newhaven Marina Ltd](#)
REP-157 [Nick Norris](#)
REP-158 [Nicola Hanley](#)
REP-159 [Nigel Enever](#)
REP-160 [Nigel McEnergy](#)
REP-161 [Nigel Ordish](#)
REP-162 [Paul Morris](#)
REP-163 [Peter Bacon](#)
REP-164 [Peter Bateup](#)
REP-165 [Peter Letts](#)
REP-166 [Philip Howson](#)
REP-167 [Philip Thomas](#)
REP-168 [Public Health England](#)

REP-169	<u>R.J.Gloyn</u>
REP-170	<u>R M Hirst</u>
REP-171	<u>Ramblers Sussex Area</u>
REP-172	<u>Richard Donovan</u>
REP-173	<u>Richard Maille</u>
REP-174	<u>Rob Bairstow</u>
REP-175	<u>Robert Clark</u>
REP-176	<u>Robert Dargan</u>
REP-177	<u>Robert Edward Felton</u>
REP-178	<u>Roger Needham</u>
REP-179	<u>Roger Sheridan</u>
REP-180	<u>Roy Hill</u>
REP-181	<u>Royal Society for the Protection of Birds</u>
REP-182	<u>Royal Yachting Association</u>
REP-183	<u>S Field</u>
REP-184	<u>S. Lovelace</u>
REP-185	<u>Santosh Bhabra</u>
REP-186	<u>Scott Warman</u>
REP-187	<u>Selsey Fishermans Association</u>
REP-188	<u>Sharon Edwards</u>
REP-189	<u>Shoreham Beach Residents Association</u>
REP-190	<u>Shoreham Port Authority</u>
REP-191	<u>Simon Baxendale</u>
REP-192	<u>Simon Jones</u>
REP-193	<u>Simon Vlok</u>
REP-194	<u>South Downs National Park Authority</u>
REP-195	<u>South Downs Society</u>
REP-196	<u>South Eastern Fishermen</u>
REP-197	<u>Steven Parker</u>
REP-198	<u>Stewart Roberts</u>
REP-199	<u>Stop the Rampion Offshore Windfarm</u>
REP-200	<u>Sue Paskins</u>
REP-201	<u>Susan Blamires</u>
REP-202	<u>Susan Murray</u>
REP-203	<u>Sussex Inshore Fisheries and Conservation Authority</u>
REP-204	<u>Sussex Ornithological Society</u>
REP-205	<u>Sussex Wildlife Trust</u>
REP-206	<u>Suzanne Philipps</u>
REP-207	<u>The British Horse Society</u>
REP-208	<u>The Crown Estate</u>
REP-209	<u>The Ilex Conservation Group</u>
REP-210	<u>Tim Holter</u>
REP-211	<u>Timothy Williams</u>
REP-212	<u>Tracey Masters</u>
REP-213	<u>Trinity House</u>
REP-214	<u>Tug- Horizon</u>
REP-215	<u>Twineham Parish Council</u>
REP-216	<u>UK Chamber of Shipping</u>

REP-217 [UKIP Mid Sussex](#)
REP-218 [Val Wills](#)
REP-219 [Vicky Wakefield-Jarrett](#)
REP-220 [Washington Parish Council](#)
REP-221 [West Sussex County Council](#)
REP-222 [West Sussex Local Access Forum](#)
REP-223 [William Donald Bickerstaff](#)

Deadline for submission by the applicant of proposed corrections and omissions to the application

REP-224 [E.ON - Errata Sheet](#)

**Deadline I 9 August 2013
Local Impact Reports**

REP-225 [Brighton and Hove City Council](#)
REP-226 [South Downs National Park Authority](#)
REP-227 [West Sussex CC and Horsham DC and Mid Sussex DC and Adur DC and Worthing BC - Joint LIR](#)

**Deadline II 15 August 2013
Statements of Common Ground**

REP-228 [South Downs National Park Authority - Statement of Common Ground with E.ON](#)
REP-229 [E.ON - Statement of Common Ground with Adur and Worthing Councils](#)
REP-230 [E.ON - Statement of Common Ground with Environment Agency](#)
REP-231 [E.ON - Statement of Common Ground with Highways Agency](#)
REP-232 [E.ON - Statement of Common Ground with Maritime and Coastguard Agency](#)
REP-233 [E.ON - Statement of Common Ground with Natural England](#)
REP-234 [E.ON - Statement of Common Ground with Network Rail Infrastructure](#)
REP-235 [E.ON - Statement of Common Ground with Public Health England](#)
REP-236 [E.ON - Statement of Common Ground with Royal Yachting Association](#)
REP-237 [E.ON - Statement of Common Ground with Shoreham Port](#)
REP-238 [E.ON - Statement of Common Ground with Southern Water](#)
REP-239 [E.ON- Statement of Common Ground with Sussex Inshore Fisheries and Conservation Authority](#)
REP-240 [E.ON - Statement of Common Ground with The Marine Management Organisation](#)
REP-241 [E.ON - Statement of Common Ground with the RSPB and Sussex Ornithological Society](#)
REP-242 [E.ON- Statement of Common Ground with Mid Sussex District Council](#)
REP-243 [E.ON - Statement of Common Ground with English Heritage](#)
REP-244 [E.ON- Statement of Common Ground with UK Chamber of Shipping](#)
REP-245 [E.ON - Statement of Common Ground with Newhaven Port Authority](#)

- REP-246 [E.ON -Draft Statement of Common Ground with Commercial Fisheries Working Group \(Late Submission\)](#)
- REP-247 [E.ON - Draft Statement of Common Ground with South Downs National Park Authority](#)
- REP-248 [E.ON - Draft Statement of Common Ground with Twineham Parish Council](#)
- REP-249 [E.ON - Draft Statement of Common Ground with West Sussex County Council and Horsham District Council](#)
- REP-250 [E.ON - Memorandum of Understanding with Hanson Aggregates](#)
- REP-650 [Public Health England](#)

Deadline II 15 August 2013

Written Representations

- REP-251 [Adur District Council and Worthing Borough Council](#)
- REP-252 [Brighton and Hove City Council](#)
- REP-253 [English Heritage](#)
- REP-254 [E.ON - Response to Deadline II](#)
- REP-255 [EON - Consents and Licences required under other legislation v2](#)
- REP-256 [EON - Clarification of Collision Risks](#)
- REP-257 [EON - Cumulative Comparison Table](#)
- REP-258 [E.ON - Further plans showing indicative location of HDD sites](#)
- REP-259 [E.ON - No Significant Effects Report](#)
- REP-260 [E.ON - Outline Written Scheme of Investigations](#)
- REP-261 [E.ON - Outline Ecological Landscape Management Plan](#)
- REP-262 [E.ON - Relevant Representations Responses](#)
- REP-263 [E.ON - Replacement sheet for public Rights of Way temporary closure plan](#)
- REP-264 [E.ON - Replacement sheets for Important Hedgerows Plan](#)
- REP-265 [E.ON - Replacement sheets for Special Category Land Plans](#)
- REP-266 [E.ON - Review of Rampion Offshore Wind Farm against National Policy Statements](#)
- REP-267 [E.ON - Schedule of Communications](#)
- REP-268 [E.ON - Schedule of Mitigation](#)
- REP-269 [E.ON - Schedule of Status of Agreements](#)
- REP-270 [E.ON - Seascape Landscape and Visual Impact clarification note](#)
- REP-271 [E.ON - Technical Note on Typical Traffic Flows](#)
- REP-272 [E.ON - Updated and Additional Piling Noise Figures](#)
- REP-273 [GlaxoSmithKline](#)
- REP-274 [Shoreham Port Authority](#)
- REP-275 [Alec Roy Coppard](#)
- REP-276 [Annette Livings](#)
- REP-277 [B M Gore](#)
- REP-278 [Colin Child](#)
- REP-279 [David Tufnell](#)
- REP-280 [Elizabeth Ann Jones](#)
- REP-281 [Environment Agency](#)
- REP-282 [Helen Eastham](#)

REP-283	<u>Highways Agency</u>
REP-284	<u>Homes and Communities Agency</u>
REP-285	<u>Horsham District Council</u>
REP-286	<u>Hove Civic Society - with addendum from Michael Brown</u>
REP-287	<u>Jeff Livings</u>
REP-288	<u>Joint Nature Conservation Committee (late Submission)</u>
REP-289	<u>Katherine Anne Hirst</u>
REP-290	<u>Lewes District Council and East Sussex County Council</u>
REP-291	<u>Mary Campbell</u>
REP-292	<u>Michael Ray</u>
REP-293	<u>National Federation of Fishermen's Organisations</u>
REP-294	<u>National Grid</u>
REP-295	<u>National Trust</u>
REP-296	<u>Nicola and Robert Hanley</u>
REP-297	<u>Natural England</u>
REP-298	<u>Robert Hirst</u>
REP-299	<u>Shoreham Beach Residents Association</u>
REP-300	<u>South Downs National Park Authority- Comments on the DCO</u>
REP-301	<u>South Downs Society</u>
REP-302	<u>The Bishop of Chichester - (late submission)</u>
REP-303	<u>Twineham Parish Council</u>
REP-304	<u>UK Power Networks</u>
REP-305	<u>West Sussex County Council</u>
REP-306	<u>William Eastham</u>
REP-226	<u>South Downs National Park Authority</u>
REP-651	<u>Natural England – Summary of Written Reps and Relevant Reps</u>

**Deadline II 15 August 2013
Responses to Examining Authority's Questions**

REP-254	<u>E.ON - Response to Deadline II</u>
REP-307	<u>E.ON - Response to ExA - Schedule of Statutory Undertakers (late Response)</u>
REP-308	<u>E.ON - Response to Q67 Schedule of Land Interests Part 1 (Late Submission)</u>
REP-309	<u>E.ON - Response to Q67 -Schedule of Land interests Part 2 (late Submission)</u>
REP-310	<u>E.ON - BoR Part 1 - Updated August 2013 (clean version) - (late submission)</u>
REP-311	<u>E.ON - BoR Part 1 -Update August 2013 (with tracks) - (late submission)</u>
REP-312	<u>E.ON - BoR Part 2 - Update August 2013 (clean version) - late submission)</u>
REP-313	<u>E.ON - BoR Part 2 - Update August 2013 (with tracks) - (late submission)</u>
REP-314	<u>E.ON - BoR Part 3 - August 2013 (with tracks) - (late submission)</u>
REP-315	<u>E.ON - BoR Part 3 -Update August 2013 (clean version) - (late submission)</u>
REP-316	<u>E.ON - BoR Part 4 - Update August 2013 (clean version) - (late submission)</u>

REP-317	<u>E.ON - BoR Part 4 - Update August 2013 (with tracks) - (late submission)</u>
REP-318	<u>E.ON - BoR Part 5 and Schedule - Update August 2013 (with tracks) - (late submission)</u>
REP-319	<u>E.ON - BoR Part 5 and Schedule -Update August 2013 (clean version) - (late response)</u>
REP-320	<u>E.ON - Draft DCO (Version 2)</u>
REP-321	<u>E.ON - Schedule of Changes to DCO</u>
REP-322	<u>E.ON - DCO comparison Version 1 (March 2013) and Version 2 (August 2013)</u>
REP-323	<u>Ferring Conservation Group</u>
REP-324	<u>GlaxoSmithKline</u>
REP-325	<u>Maritime and Coastguard Agency</u>
REP-326	<u>Natural England</u>
REP-327	<u>Ramblers Sussex Area</u>
REP-328	<u>Royal Yachting Association</u>
REP-329	<u>RSPB and Sussex Ornithological Society</u>
REP-330	<u>Shoreham Port Authority</u>
REP-331	<u>South Downs National Park Authority</u>
REP-332	<u>Sussex Wildlife Trust</u>
REP-333	<u>The Crown Estate</u>
REP-334	<u>Trinity House</u>
REP-335	<u>West Sussex County Council</u>
REP-336	<u>British Horse Society</u>
REP-337	<u>Campaign for National Parks</u>
REP-338	<u>Marine Management Organisation</u>
REP-652	<u>National Grid</u>

Deadline III 5 September 2013
Post-Hearing documents, Comments on LIRs

REP-339	<u>E.ON - Written Response to Deadline III</u>
REP-340	<u>E.ON - Response to Brighton & Hove City Council's LIR</u>
REP-341	<u>E.ON - Response to ExA actions</u>
REP-342	<u>E.ON - Response to Joint Council's LIR</u>
REP-343	<u>E.ON - Response to South Downs National Park Authority's LIR</u>
REP-344	<u>E.ON - Statutory Undertaker Process update table</u>
REP-345	<u>Natural England</u>
REP-346	<u>South Downs National Park Authority - updated email (late submission)</u>
REP-347	<u>West Sussex County Council - includes letters from Mid Sussex Adur and Worthing and Horsham Councils</u>

Deadline IV 12 September 2013
Comments on SoCG, WRs, Responses to ExA's Questions, Applicant's matrices to inform RIES

REP-348	<u>Natural England - Covering email for response to deadline</u>
REP-349	<u>Natural England - Comments on ExAs first written questions</u>
REP-350	<u>E.ON Written Response to Deadline IV</u>

- REP-351 [E.ON DCO Version 3 \(Appendix 1a\)](#)
- REP-352 [E.ON DCO Comparison Version 2 \(August 2013\) and Version 3 \(September 2013\) \(Appendix 1b\)](#)
- REP-353 [E.ON List of document submissions and discharging bodies for the DCO and DML](#)
- REP-354 [E.ON Schedule of changes to the draft DCO \(Version 2\)](#)
- REP-355 [E.ON response to Natural England's Written Representation](#)
- REP-356 [E.ON Response to Lewes District Council and East Sussex County Councils Written Representation](#)
- REP-357 [Marine Management Organisation](#)
- REP-358 [South Downs National Park Authority - Response to Actions arising from the ISH DCO Hearing 28 and 29 August 2013](#)
- REP-359 [West Sussex County Council](#)
- REP-653 [West Sussex County Council- Email regarding Response to action point 17](#)
- REP-654 [E.ON- SoCG with West Sussex County Council and Horsham](#)
- REP-655 [E.ON- Responses to actions due 12 September 2013](#)

Deadline V 19 September 2013
Post Hearing documents

- REP-360 [Monteum Limited](#)
- REP-361 [E.ON - Written Response to Deadline V](#)

Deadline VI 9 October 2013
Responses to comments on Applicant's matrices to inform RIES

- REP-362 [E.ON - Written Response to Deadline VI](#)

Deadline VII 15 October 2013
Responses to ExAs Second Written Questions

- REP-363 [Annette Livings](#)
- REP-364 [Bolney Parish Council](#)
- REP-365 [Brighton and Hove City Council](#)
- REP-366 [E.ON - Applicant's Response to Deadline VII](#)
- REP-367 [E.ON - Consents and licences \(version 3\)](#)
- REP-368 [E.ON - Correspondence from the Maritime and Coastguard Agency dated 18 January 2013](#)
- REP-369 [E.ON - Cuckmere Haven Beach ES Supplementary Viewpoint Figures](#)
- REP-370 [E.ON - Decision Notice for Planning Application](#)
- REP-371 [E.ON - Document submissions and discharging bodies](#)
- REP-372 [E.ON - Draft outline arboricultural method statement](#)
- REP-373 [E.ON - Draft terms of reference for the Local Liaison Group](#)
- REP-374 [E.ON - Habitats Regulations Assessment Matrices \(v3\)](#)

REP-375 [E.ON - Maintenance activities assessed in the ES](#)
REP-376 [E.ON - Note of Applicants meeting with MMO and CEFAS 1 October 2013.](#)
REP-377 [E.ON - Outline Construction and Environmental Management Plan](#)
REP-378 [E.ON - Outline Construction Noise Management Plan](#)
REP-379 [E.ON - Outline Construction Traffic Management Plan](#)
REP-380 [E.ON - Outline Diver Mitigation Plan](#)
REP-381 [E.ON - Responses to Action List for 15 October 2013](#)
REP-382 [E.ON - Seahorses in the area of the proposed Rampion OWF](#)
REP-383 [E.ON - Agreement between Navitus Bay and the Applicant on marine mammal mitigation](#)
REP-384 [E.ON - Statement from National Grid regarding Grid Connection](#)
REP-385 [E.ON - Black Bream survey May 2013](#)
REP-386 [E.ON - Draft offshore site characterisation study](#)
REP-387 [E.ON - Draft DCO \(Version 4 - October 2013\) \(clean\)](#)
REP-388 [E.ON - Comparison of draft DCO \(version 1 and version 4\)](#)
REP-389 [E.ON - Discharge of requirements in the draft DCO](#)
REP-390 [E.ON - Schedule of changes to the draft DCO and deemed DMLs \(version 3\)](#)
REP-391 [E.ON - Note on issues relating to the South Downs National Park.](#)
REP-392 [E.ON - Rochdale Envelope Clarification Note](#)
REP-393 [E.ON - Letters from Fisher German Priestner and Fisher German LLP](#)
REP-394 [E.ON - Outline Hedgerow Management Plan](#)
REP-395 [E.ON - Technical Note on Typical Traffic Flows](#)
REP-396 [East Sussex County Council](#)
REP-397 [English Heritage](#)
REP-398 [GlaxoSmithKline](#)
REP-399 [Helen Eastham](#)
REP-400 [Jeff Livings](#)
REP-401 [Katherine Hirst](#)
REP-402 [Lucy Sheridan](#)
REP-403 [Maritime and Coastguard Agency](#)
REP-404 [Marine Management Organisation](#)
REP-405 [Mr and Mrs A Wills](#)

- REP-406 [National Federation of Fishermen's Organisations](#)
- REP-407 [National Trust](#)
- REP-408 [Nicola and Robert Hanley](#)
- REP-409 [Natural England](#)
- REP-410 [RSPB and Sussex Ornithological Society](#)
- REP-411 [Richard J Maile](#)
- REP-412 [Roger Sheridan](#)
- REP-413 [Shoreham Port Authority](#)
- REP-414 [South Downs National Park Authority](#)
- REP-415 [South Downs Society](#)
- REP-416 [South Eastern Power Networks](#)
- REP-417 [The Seahorse Trust](#)
- REP-418 [Sussex Inshore Fisheries and Conservation Authority](#)
- REP-419 [Twineham Parish Council](#)
- REP-420 [West Sussex County Council](#)
- REP-421 [South Eastern Fishermen's Protection Association \(late submission\)](#)

**Deadline VII 15 October 2013
Statements of Common Ground**

- REP-422 [E.ON - Statement of Common Ground with Sussex Independent Fishermen's Group](#)
- REP-423 [E.ON - Statement of Common Ground with Twineham Parish Council](#)

Response to Rule 17 Request – Further Deadline for 29 October 2013

- REP-424 [E.ON-Reply to Rule 17 letter](#)
- REP-425 [E.ON -Further information requested under Rule 17 re outstanding HRA work and matrices](#)

**Deadline VIII 12 November 2013
Post - Hearing documents**

- REP-426 [Marine Management Organisation - Letter regarding new issues for ISH](#)
- REP-427 [Marine Management Organisation - Response to ISHs 30 October to 1 November](#)
- REP-428 [Richard J Maile](#)
- REP-429 [Christopher Goss](#)
- REP-430 [Brighton and Hove City Council](#)
- REP-431 [South Downs Society](#)
- REP-432 [Twineham Parish Council](#)
- REP-433 [RSPB and Sussex Ornithological Society](#)
- REP-434 [Clive Hackney](#)
- REP-435 [Hilarie Lewis](#)
- REP-436 [Pat Berry and Mike Whiting](#)
- REP-437 [Shoreham Port Authority](#)
- REP-438 [Natural England](#)

- REP-439 [Nicola and Robert Hanley](#)
- REP-440 [West Sussex County Council](#)
- REP-441 [The Commercial Fisherman's Working Group](#)
- REP-442 [Sussex Independent Fishermen's Group](#)
- REP-443 [South Downs National Park Authority](#)
- REP-444 [E.ON - Written Response to Deadline VIII](#)
- REP-445 [E.ON - appendix 1 - Statutory Undertakers Status report 4 November 2013](#)
- REP-446 [E.ON- Letter to the Planning Inspectorate Regarding notification of affected persons](#)
- REP-447 [E.ON - Notification letter under s56 to Helena Frances Lewis](#)
- REP-448 [E.ON - Notification letter under s56 to Janet Irving](#)
- REP-449 [E.ON - Notification letter under s56 to John Geoffrey Cousins](#)
- REP-450 [E.ON - Notification letter under s56 to Olga Cousins](#)
- REP-451 [E.ON - Notification letter under s56 to Paine Contractors Limited](#)
- REP-452 [E.ON - Notification letter under s56 to Peter Elvet Lewis](#)
- REP-453 [E.ON - Notification letter under s56 to Rachel Lesley Meates](#)
- REP-454 [E.ON - Notification letter under s56 to John Simon Birkby](#)
- REP-455 [E.ON - Notification letter under s56 to Jenny Birkby](#)
- REP-456 [E.ON - Notification letter under s56 to Jenny Driver](#)
- REP-457 [E.ON - Response to Rule 17 Request on Book of Reference updates, 2013](#)
- REP-458 [E.ON - Schedule of Changes to the BoR November 2013](#)
- REP-459 [E.ON - Black Bream Landings from ICES Rectangle 30E9 \(2008-2010\)](#)
- REP-460 [E.ON - Design and Access Statement Version 2](#)
- REP-461 [E.ON - Draft Section 106 Agreement with South Downs National Park Authority with Explanatory Note](#)
- REP-462 [E.ON - Draft Section 106 Agreement with West Sussex County Council](#)
- REP-463 [E.ON - Email regarding drift netting within the Wind Farm](#)
- REP-464 [E.ON - Fisheries Engagement Plan](#)
- REP-465 [E.ON - Fishing within Wind Farms](#)
- REP-466 [E.ON - FLO Communication and Liaison Report \(10 October 2013\)](#)
- REP-467 [E.ON - Herring Report](#)
- REP-468 [E.ON - Overlap of the Structures Exclusion Zone \(Blue Triangle\) on the '9 Miler' Scallop grounds](#)
- REP-469 [E.ON - Plan showing potential Structures Exclusion Zone](#)
- REP-470 [E.ON - Response to Hearing Actions](#)
- REP-471 [E.ON - RSK Clarification Note - Fish \(including Seahorses\) and Increased Hammer Bl](#)
- REP-472 [E.ON - Supply Chain Steering Grouping Paper](#)
- REP-473 [E.ON - Update on matters not agreed between E.ON and Natural England](#)
- REP-474 [E.ON - No Significant Effects Report- Revision C](#)
- REP-475 [E.ON - Ornithology work to address Natural England's Written Representations](#)
- REP-476 [E.ON - Updated HRA Matrices \(v5\)](#)
- REP-477 [Twineham Parish Council](#)

Deadline IX 28 November 2013

Comments on responses to the EXA's second written questions

REP-478	<u>E.ON - Written Response to Deadline IX</u>
REP-479	<u>E.ON - Appendix 1 - draft DCO version 5</u>
REP-480	<u>E.ON - Appendix 2 - comparison between Version 4 (October 2013) and Version 5 (November 2013) of the DCO</u>
REP-481	<u>E.ON - Appendix 3 - Responses to actions</u>
REP-482	<u>E.ON - Appendix 4 - Response to comments from ISH</u>
REP-483	<u>E.ON - Appendix 5 - Spawning of the Downs herring component (version 2)</u>
REP-484	<u>E.ON - Appendix 6 - Clarification note on noise modelling undertaken to inform the extent of the Black Bream spatial restriction</u>
REP-485	<u>E.ON - Appendix 7 - Black Bream piling restrictions plan</u>
REP-486	<u>E.ON - Appendix 8 - Note on dual approach to deemed marine licences and transfer of benefit</u>
REP-487	<u>E.ON - Appendix 9 - Draft Section 106 Agreement with WSCC (version 2)</u>
REP-488	<u>E.ON - Appendix 10 - Measures of success for discharge of requirements and conditions</u>
REP-489	<u>E.ON - Appendix 11 (1) - Explanatory note on revised visualisations of the array (Figures 1-11)</u>
REP-490	<u>E.ON - Appendix 11 (2) - Additional visualisations of the array to include the structures exclusion zone (Figures 12-19)</u>
REP-491	<u>E.ON - Appendix 12 - Night time visual representation of offshore array</u>
REP-492	<u>E.ON - Appendix 13 - Outline hedgerow management plan (version 2)</u>
REP-493	<u>E.ON - Appendix 14 - Clarification document on the Rochdale Envelope for foundations</u>
REP-494	<u>E.ON - Appendix 15 - Outline cable specification and installation plan</u>
REP-495	<u>E.ON - Appendix 16 - Consideration of Possible Hybrid Layout Alternatives</u>
REP-496	<u>E.ON - Appendix 17 - Outline marine written scheme of investigation</u>
REP-497	<u>E.ON - Appendix 18 - Outline ecological and landscape management plan (version 2)</u>
REP-498	<u>E.ON - Appendix 19 - Outline arboricultural method statement</u>
REP-499	<u>E.ON - Appendix 20 - Outline scour protection management and cable armouring plan</u>
REP-500	<u>E.ON - Appendix 21 - Maintenance activities assessed in the ES (version 2)</u>
REP-501	<u>E.ON - Appendix 22 - Correspondence from Mid Sussex District Council</u>
REP-502	<u>E.ON - Appendix 23 - Letter from The Crown Estate dated 25 November 2013</u>
REP-503	<u>E.ON - Appendix 24 - Updated Offshore Works Plan revision 2</u>
REP-504	<u>Katherine Hirst</u>
REP-505	<u>South Downs National Park Authority</u>
REP-506	<u>Robert and Nicola Hanley</u>
REP-507	<u>Natural England</u>
REP-508	<u>Marine Management Organisation</u>

REP-509 [West Sussex County Council](#)
REP-510 [Royal Society for the Protection of Birds and the Sussex
Ornithological Society](#)
REP-511 [Andrew Coleman](#)
REP-512 [Surfers Against Sewage](#)

Deadline X – 5 December 2013
Final SOCGs, Post Hearing documents

REP-513 [Natural England - Annex A - In-combination Assessment - gannet](#)
REP-514 [Natural England - Annex B - In-combination Assessment -
kittiwake](#)
REP-515 [Hove Civic Society](#)
REP-516 [Brighton & Hove City Council](#)
REP-517 [National Federation of Fishermen's Organisations](#)
REP-518 [Charles Worsley](#)
REP-519 [E.ON - Response to Deadline X](#)
REP-520 [E.ON - Appendix 1 - Comments on agenda for Compulsory
Acquisition Hearing](#)
REP-521 [E.ON - Appendix 2 Annexure 1 - Letter to Worsley](#)
REP-522 [E.ON - Appendix 2 Annexure 2 - Plot 92 Worsley plan](#)
REP-523 [E.ON - Appendix 2 Annexure 3 - Contracts Rights of Third Parties
Act](#)
REP-524 [E.ON - Appendix 2 - Annexure 4 - Note on Blight and Part 1 claims](#)
REP-525 [E.ON - Appendix 2 - Annexure 5 - Note on E.ON's Resources and
availability of funding](#)
REP-526 [E.ON - Appendix 2 - Annexure 6 - Response to correspondence
from Mr Whiting](#)
s.127-073 [E.ON - Appendix 3 - Protective Provisions agreed for benefit of
South Eastern Power Networks](#)
s.127-074 [E.ON - Appendix 4 - Protective Provisions for the benefit of
Southern Water Services Limited](#)
REP-527 [E.ON - Appendix 5 Rampion Book of Reference Part 1 - December
2013 clean](#)
REP-528 [E.ON - Appendix 5 Rampion Book of Reference Part 1 - December
2013 tracked](#)
REP-529 [E.ON - Appendix 5 Rampion Book of Reference Part 2 - December
2013 clean](#)
REP-530 [E.ON - Appendix 5 Rampion Book of Reference Part 2 - December
2013 tracked](#)
REP-531 [E.ON - Appendix 5 Rampion Book of Reference Part 3 - December
2013 clean](#)
REP-532 [E.ON - Appendix 5 Rampion Book of Reference Part 3 - December
2013 tracked](#)
REP-533 [E.ON - Appendix 5 Rampion Book of Reference Part 4 - December
2013 clean](#)
REP-534 [E.ON - Appendix 5 Rampion Book of Reference Part 5 and
Schedule - December 2013 clean](#)
REP-535 [E.ON - Appendix 5 Rampion Book of Reference Part 5 and
Schedule - December 2013 tracked](#)
REP-536 [E.ON - Appendix 5 - Explanatory Note for Book of Reference \(5
December 2013\)](#)
REP-537 [E.ON - Appendix 5 - Schedule of Changes to the Book of Reference
\(Version 2 - Version 3\)](#)

- REP-538 [E.ON - Appendix 6 - SoCG with Commercial Fisheries Working Group](#)
- REP-539 [E.ON Appendix 7 - Marine Management Organisation matters not agreed](#)
- REP-540 [E.ON - Appendix 8 - Update in relation to matters not agreed with West Sussex County Council](#)
- REP-541 [E.ON - Applicants Response to Required Actions by the Examining Authority](#)
- s.127-067 [E.ON - SoCG between Applicant and National Grid](#)
- s.127-068 [E.ON Letter relating to Southern Water Services Ltd withdrawal of representations](#)
- s.127-069 [E.ON - Letter relating to South Eastern Power Networks withdrawal of representations](#)
- REP-542 [E.ON - Draft SoCG with South Downs National Park Authority](#)
- REP-543 [Marine Management Organisation New Issue raised Letter](#)
- s.127-072 [Southern Water Services Ltd](#)
- s.127-075 [South Eastern Power Networks](#)
- s.127-070 [National Grid Electricity Transmission Plc](#)
- REP-544 [Query from Nicholas Soames MP](#)
- REP-545 [Response Letter to Nicholas Soames MP](#)

Deadline XI – 10 December 2013

Post hearing documents, documents requested by ExA, any summary of oral case put at DCO and DML hearings

- REP-546 [Marine Management Organisation](#)
- REP-547 [John Clark](#)
- REP-548 [John Clark- Attachment 1](#)
- REP-549 [John Clark- Attachment 2](#)
- REP-550 [South Downs National Park Authority - Response to actions arising from Hearing on 4,5,6 December 2013](#)
- REP-551 [South Downs National Park Authority - Rampion Off-shore Windfarm Mitigation and Enhancement Obligation Update](#)
- REP-552 [South Downs National Park Authority - Final part of response to Hearings on 4,5,6 December 2013](#)
- REP-553 [Hove Civic Society](#)
- REP-554 [Royal Society for the Protection of Birds and the Sussex Ornithological Society](#)
- REP-555 [West Sussex County Council - Cover Letter](#)
- REP-556 [West Sussex County Council - Response to proposed changes to come out of Hearings on 5 & 6 December 2013](#)
- REP-557 [West Sussex County Council - Correspondence with Mid Sussex District Council](#)
- REP-558 [West Sussex County Council - Horsham delegated authority letter](#)
- REP-559 [E.ON - Cover Letter](#)
- REP-560 [E.ON - Written Response to Deadline XI](#)
- REP-561 [ExA Draft Development Consent Order Version 5 \(DCO\)](#)
- REP-562 [E.ON - Appendix 1 - Draft DCO \(Version 6 - December 2013\)](#)
- REP-563 [E.ON - Appendix 2 - Comparison of Version 6 \(December 2013\) of the Draft DCO with Version 1 \(March 2013\)](#)
- REP-564 [E.ON - Appendix 3 - Comparison of Version 6 \(December 2013\) of the Draft DCO with Version 5 \(November 2013\)](#)

REP-565	<u>E.ON – Appendix 4 - Action List from the Hearing on 5 December 2013</u>
REP-566	<u>E.ON - Appendix 5 - Action List from the Hearing on 6 December 2013</u>
REP-567	<u>E.ON - Appendix 6 - Comparison between Version 1 and 2 of the Onshore Substation Design and Access Statement</u>
REP-568	<u>E.ON - Appendix 7 - Galloper Wind Farm Project - Decommissioning Strategy (November 2011)</u>
REP-569	<u>E.ON - Appendix 8 - Replacement Important Hedgerow Plans - Sheets 8 and 9</u>
REP-570	<u>E.ON - Appendix 9 - Measures of success for discharging requirements (Version 2 - December 2013)</u>
REP-571	<u>E.ON - Appendix 10 - Outline Onshore Archaeological Written Scheme of Investigation</u>
REP-572	<u>E.ON - Appendix 11 - Schedule of maintenance activities assessed in the ES (Version 3 - December 2013)</u>
REP-573	<u>E.ON - Appendix 12 - Summary of Protective Provisions as at 10 December 2013</u>
REP-574	<u>E.ON – Appendix 13 - Correspondence with the MCA and Trinity House</u>
REP-575	<u>E.ON – Appendix 14 - Natural England update on Statement of Common Ground</u>
REP-576	<u>E.ON - Appendix 15 - Additional clarification on ornithology in relation to the Rampion Project</u>
REP-577	<u>E.ON - Further representation in relation to Mr Charles Worsley</u>
REP-578	<u>E.ON - Interest of Church of England Commissioners Plots 65,66,69 and 70</u>
REP-579	<u>Natural England - Actions arising from Issue Specific Hearing on 4 December 2013</u>
REP-580	<u>Natural England - Actions arising from Issue Specific Hearings on 5 and 6 December 2013</u>
REP-581	<u>Natural England - Summary of Oral representations from Hearing on 4 December 2013</u>
REP-582	<u>Natural England - Annex 1 - In-combination assessment tables</u>
REP-583	<u>Natural England - Annex 2 - Response in relation to LSVIA</u>
REP-584	<u>Natural England - Annex 3 - LSVIA Design principles</u>
REP-585	<u>Geoff King</u>
REP-586	<u>Correspondence from William Bashall Associates on behalf of Church of England Commissioners</u>

Deadline XII – 8 January 2013

Any written comments on the ExA's draft Development Consent Order, any written comments on Report on the Implications for European Sites, including the matrices prepared by the ExA

REP-587	<u>Nigel Ordish</u>
REP-588	<u>Nigel Ordish- Further Rep</u>
REP-589	<u>South Downs National Park Authority - Comment on Draft DCO</u>
REP-590	<u>South Downs National Park Authority - Comments on LSVIA Design Principles</u>
REP-591	<u>English Heritage</u>
REP-592	<u>Marine Management Organisation</u>
REP-593	<u>Trinity House</u>
REP-594	<u>Natural England - Comments on marine ornithology and RIES</u>

	<u>report/matrices</u>
REP-595	<u>Natural England- Comments on LSVIA Design Principles</u>
REP-596	<u>West Sussex County Council</u>
REP-597	<u>Highways Agency</u>
REP-598	<u>Environment Agency</u>
REP-599	<u>E.ON - Response to Deadline XII</u>
REP-600	<u>E.ON - Appendix 1 - Draft DCO version 7</u>
REP-601	<u>E.ON - Appendix 2 - Comparison of version 7 of Draft DCO with version 1</u>
REP-602	<u>E.ON - Appendix 3 - Comparison of version 7 of Draft DCO with the Examining Authority's draft of Dec 2013</u>
REP-603	<u>E.ON - Appendix 4 - Schedule of comments on the Examining Authority's draft DCO</u>
REP-604	<u>E.ON - Appendix 5 - Offshore Works Plan Version 3</u>
REP-605	<u>E.ON - Appendix 6 - Piling Restriction Plan Version 2</u>
REP-606	<u>E.ON - Appendix 7 - Book of Reference Part 1- Version 4 (Clean version)</u>
REP-607	<u>E.ON - Appendix 7 - Book of Reference Part 1- Version 4 (Tracked version)</u>
REP-608	<u>E.ON - Appendix 7 - Book of Reference Part 2- Version 4 (Clean version)</u>
REP-609	<u>E.ON - Appendix 7 - Book of Reference Part 2- Version 4 (Tracked version)</u>
REP-610	<u>E.ON - Appendix 7 - Book of Reference Part 3- Version 4 (Clean version)</u>
REP-611	<u>E.ON - Appendix 7 - Book of Reference Part 3- Version 4 (Tracked version)</u>
REP-612	<u>E.ON - Appendix 7 - Book of Reference Part 4- Version 4 (Clean version)</u>
REP-613	<u>E.ON - Appendix 7 - Book of Reference Part 4- Version 4 (Tracked version)</u>
REP-614	<u>E.ON - Appendix 7 - Book of Reference Part 5 and Schedule- Version 4 (Clean version)</u>
REP-615	<u>E.ON - Appendix 8 - Outline Construction Traffic Management Plan Version 2</u>
REP-616	<u>E.ON - Appendix 9 - Outline Scour Protection Management and Cable Armouring Plan</u>
REP-617	<u>E.ON - Appendix 10 - Outline Cable Specification and Installation Plan</u>
REP-618	<u>E.ON - Appendix 11 - Outline Fisheries Liaison Strategy</u>
REP-619	<u>E.ON - Appendix 12 - Measures of success for discharge of requirements</u>
REP-620	<u>E.ON - Appendix 13 - Comments on the Examining Authority's HRA Matrices</u>
REP-621	<u>E.ON - Appendix 14 - Section 106 Agreement with West Sussex County Council</u>
REP-622	<u>E.ON - Appendix 15 - Unilateral Undertaking to South Downs National Park Authority</u>
REP-623	<u>E.ON - Appendix 16 - Statement of Common Ground with South Downs National Park Authority</u>
REP-624	<u>E.ON - Appendix 17 - Correspondence with Natural England</u>
REP-625	<u>GlaxoSmithKline</u>
REP-626	<u>Mr & Mrs Hanley</u>

Response to Rule 17 Request – Further Deadline for 18 January 2014

REP-627	<u>South Downs National Park Authority</u>
REP-628	<u>Twineham Parish Council</u>
REP-629	<u>West Sussex County Council - Response to Rule 17 Request</u>
REP-630	<u>Natural England - Response to Rule 17 Request</u>
REP-631	<u>E.ON - Cover Letter</u>
REP-632	<u>E.ON - Applicants Response to Rule 17 Request</u>
REP-633	<u>E.ON - Appendix 1 - Draft Development Consent Order Version 8</u>
REP-634	<u>E.ON - Appendix 2 - Comparison between Version 1 and Version 8 of Development Consent Order</u>
REP-635	<u>E.ON - Appendix 3 - Comparison between Version 7 and Version 8 of Development Consent Order</u>
REP-636	<u>E.ON - Appendix 4 - Case transcript</u>
REP-637	<u>E.ON - Appendix 5 - Response to Highways Agency letters</u>
REP-638	<u>E.ON - Appendix 6 - Cumulative Impact Assessment Guidelines</u>
REP-639	<u>E.ON - Appendix 7 - Scottish Natural Heritage guidance on Cumulative Impact Assessment</u>
REP-640	<u>E.ON - Appendix 8 - Responses to Rule 17 Request from Natural England - JNCC and East Anglia One</u>
REP-641	<u>E.ON - Appendix 9 - Table 1- Rampion seabird collision risk cumulative assessment summary</u>
REP-642	<u>E.ON - Appendix 10 - Correspondence with South Downs National Park Authority</u>
REP-643	<u>E.ON - Position of the Applicant and Highways Agency</u>
REP-644	<u>E.ON - Email regarding access</u>
REP-645	<u>GlaxoSmithKline- Response to Rule 17 Request</u>
REP-646	<u>Royal Society for the Protection of Birds and the Sussex Ornithological Society - Response to Rule 17 Request</u>
REP-647	<u>Highways Agency - Response to Rule 17 Request Email 1</u>
REP-648	<u>Highways Agency - Response to Rule 17 Request Email 2</u>
REP-649	<u>E.ON - Crossing agreement with GlaxoSmithKline</u>

Hearings

Preliminary Meeting

HR-001	<u>E.ON Preliminary meeting summary document</u>
HR-002	<u>National Grid Statement for Preliminary Meeting</u>
HR-003	<u>Natural England Preliminary Meeting Summary Document</u>
HR-004	<u>Preliminary Meeting Audio session 1</u>
HR-005	<u>Preliminary Meeting Audio session 2</u>
HR-006	<u>Preliminary Meeting Audio session 3</u>
HR-007	<u>Preliminary Meeting Note</u>

Issue Specific Hearing 28 & 29 August 2013

Development Consent Order and Deemed Marine Licence

HR-008	<u>Notification of Hearings and Site Visits</u>
HR-009	<u>E.ON DCO and DML Hearing Notice</u>
HR-010	<u>Horsham District Council -Delegated Authority Letter 2013</u>
HR-011	<u>Notification of DCO hearing 28 and 29 August 2013</u>
HR-012	<u>Audio Recording of Issue Specific Hearing 28th August - Session 1</u>
HR-013	<u>Audio Recording of Issue Specific Hearing 28th August - Session 2</u>
HR-014	<u>Audio Recording of Issue Specific Hearing 28 August - Session 3</u>
HR-015	<u>Audio Recording of Issue Specific Hearing 28th August - Session 4</u>
HR-016	<u>Audio Recording of Issue Specific Hearing 29th August - Session 5</u>
HR-017	<u>Audio Recording of Issue Specific Hearing 29th August - Session 6</u>
HR-018	<u>Audio Recording of Issue Specific Hearing 29th August - Session 7</u>
HR-019	<u>Action Points from DCO Hearing 28 and 29 August</u>
HR-020	<u>West Sussex County Council - update on Action 3 from Issue Specific Hearing 28 and 29 August</u>
HR-021	<u>The Crown Estate to E.ON- Response to Actions Arising from Issue Specific Hearing 28 and 29 August</u>
HR-022	<u>South Downs National Park Authority</u>

Open Floor Hearing 11 & 12 September 2013

HR-023	<u>E.ON - Open Floor Hearings Notice</u>
HR-024	<u>Open Floor Hearing 11 September Audio 2013</u>
HR-025	<u>Open Floor Hearing 12 September Audio 2013</u>
HR-026	<u>South Downs Society -speaking notes for Open Floor Hearing 12 September</u>
HR-027	<u>Mrs Katherine Hirst on behalf of Twineham Parish Council</u>
HR-028	<u>Nicola Hanley</u>
HR-029	<u>Mary Campbell</u>
HR-030	<u>Richard J Maile</u>
HR-031	<u>WSCC response to Action Point 17</u>

Issue Specific Hearing 30 October 2013 Biodiversity, biological environment, Ecology including Habitats Regulation Assessment

HR-032	<u>Notification of Issue specific Hearing topics Letter</u>
HR-033	<u>E.ON Issue Specific and Compulsory Acquisition Hearings notice</u>
HR-034	<u>E.ON - Letter regarding Issue specific hearing on 30 October 2013</u>
HR-035	<u>Response from the Planning Inspectorate regarding the applicant's enquiry to reschedule ISH on 30 November 2013</u>
HR-036	<u>Partial meeting note from ISH 30 October - due to lack of Audio Recording</u>

- HR-037 [Audio recording Issue Specific Hearing 30 October - Session 2](#)
HR-038 [Audio recording of Issue Specific Hearing 30 October - Session 3](#)
HR-039 [Audio recording of Issue Specific Hearing 30 October - Session 4](#)
HR-040 [Action points from ISH 30 October 2013](#)
HR-041 [Issue Specific Hearing Agenda 30 October 2013](#)

Issue Specific Hearing 31 October 2013
Landscape/Seascape & Visual Impact

- HR-042 [Issue Specific Hearing Agenda 31 October 2013](#)
HR-043 [Audio recording of Issue Specific Hearing 31 October - Session 1](#)
HR-044 [Audio recording of Issue Specific Hearing 31 October - Session 2](#)
HR-045 [Audio recording of Issue Specific Hearing 31 October - Session 3](#)
HR-046 [Audio recording Issue Specific Hearing 31 October - Session 4](#)
HR-047 [Action points from ISH 31 October 2013](#)

Issue Specific Hearing 1 November 2013
Socio-economic Impacts including commercial fishing

- HR-048 [Issue Specific Hearing Agenda 1 November 2013](#)
HR-049 [Audio recording of Issue Specific Hearing 1 November - Session 1](#)
HR-050 [Audio recording of Issue Specific Hearing 1 November - Session 2](#)
HR-051 [Audio recording of Issue Specific Hearing 1 November - Session 3](#)
HR-052 [Action points from ISH 1 November 2013](#)

Issue Specific Hearing 6 November
Development Consent Order and Deemed Marine Licence

- HR-053 [E.ON - comments in advance of the Issue Specific Hearing on the 6 - 7 November 2013](#)
HR-054 [Issue Specific Hearing Agenda 6 and 7 November 2013](#)
HR-055 [Audio -Issue Specific Hearing 6 November Session 1](#)
HR-056 [Audio -Issue Specific Hearing 6 November Session 2](#)
HR-057 [Audio -Issue Specific Hearing 6 November Session 3](#)
HR-058 [Action points from Issue Specific Hearing 6 November 2013](#)

Issue Specific Hearing 7 November
Development Consent Order and Deemed Marine Licence

- HR-059 [Audio -Issue Specific Hearing 7 November Session 1](#)
HR-060 [Audio -Issue Specific Hearing 7 November Session 2](#)
HR-061 [Audio -Issue Specific Hearing 7 November Session 3 Part 1](#)
HR-062 [Audio -Issue Specific Hearing 7 November Session 3 Part 2](#)
HR-063 [Action points from Issue Specific Hearing 7 November 2013](#)

Compulsory Acquisition Hearing 27 November 2013

- s.127-082 [Agenda for Compulsory Acquisition and s127 Hearing](#)
HR-064 [Action Points - Compulsory Acquisition Hearing](#)
HR-065 [Audio recording of Compulsory Acquisition Hearing - session 2](#)
HR-066 [Audio recording of Compulsory Acquisition Hearing - session 3](#)

HR-067 [Audio recording of Compulsory Acquisition Hearing - session 4](#)

Issue Specific Hearing 4 December 2013
Biodiversity, biological environment, Ecology including Habitats
Regulation Assessment

HR-068 [ExA Notification of ISH Topics for 4 December 2013](#)
HR-069 [Agenda for Issue Specific Hearing on 4 December 2013](#)
HR-070 [E.ON - Applicants comments in advance of ISH on 4 December 2013](#)
HR-071 [E.ON - cover letter for comments on agenda for ISH on 4 December 2013](#)
HR-072 [Audio Recording - Session 1](#)
HR-073 [Audio Recording - Session 2](#)
HR-074 [Audio Recording - Session 3](#)
HR-075 [Audio Recording - Session 4](#)
HR-076 [Audio Recording - Session 5](#)
HR-077 [Issue Specific Hearing on Biodiversity, biological environment and ecology including Habitats Regulations assessment](#)

Issue Specific Hearing 5 and 6 December 2013
DCOs and DMLs

HR-078 [Agenda for Issue Specific Hearing on 5-6 December 2013 relating to DCO/DML](#)
HR-079 [Audio Recording - Session 1 - 5 December](#)
HR-080 [Audio Recording - Session 2 - 5 December](#)
HR-081 [Audio Recording - Session 3 - 5 December](#)
HR-082 [Audio Recording - Session 4 - 5 December](#)
HR-083 [Actions arising from Issue Specific Hearing on 5 December 2013 relating to DCO/DML](#)
HR-084 [Actions Arising from Issue Specific Hearing on 6 December 2013 relating to DCO/DML](#)
HR-085 [Audio Recording - Session 1 - 6 December](#)
HR-086 [Audio Recording - Session 2 - 6 December](#)
HR-087 [Audio Recording - Session 3 - 6 December](#)

Site Visits

HR-088 [Route Maps for the accompanied site visit 25-26 September 2013](#)
HR-089 [Site Visit Itinerary Letter for 25-26 September](#)

Section 127 Application

s.127-001 [Department for Transport - s127 Application direction letter - with regards to Network Rail Infrastructure Limited](#)
s.127-002 [E.ON - s127 Application - with regards to Network Rail Infrastructure Limited](#)
s.127-003 [E.ON - s127 Application Appendix 5 Plan - with regards to National Grid Electricity Transmission PLC](#)
s.127-004 [E.ON - s127 Application Appendix 6 Schedule of Communications - with regards to National Grid Electricity Transmission PLC](#)
s.127-005 [E.ON - s127 Application covering letter - with regards to National Grid Electricity Transmission PLC](#)

- s.127-006 [E.ON - s127 Application letter - with regards to National Grid Electricity Transmission PLC](#)
s.127-007 [E.ON - Pro forma s127 Certificate](#)

Section 127 Procedural Decisions

- s.127-008 [s127 Timetable letter - E ON - Southern Water](#)
s.127-009 [s127 Timetable letter - E.ON - South Eastern Power Networks](#)
s.127-010 [s127 Timetable letter - Southern Water](#)
s.127-011 [s127 Timetable letter - South Eastern Power Networks](#)
s.127-012 [s127 Timetable Letter - Network Rail Infrastructure Ltd](#)
s.127-013 [s127 timetable letter E.ON - NRIL](#)
s.127-014 [s127 timetable letter NGET](#)
s.127-015 [s127 timetable letter E.ON - NGET](#)

Section 127 Hearing 27 November 2013

- s.127-016 [Agenda for Hearing into Section 127 Applications on 27 November 2013](#)
s.127-017 [s.127 Hearing Notification and Amendment to Timetable](#)
s.127-018 [Action Points - s127 Hearing](#)
s.127-019 [National Grid Electricity Transmission Plc](#)
s.127-020 [Audio Recording of S127 Hearing \(being session 1 of audio recording of CAH of 27 November 2013\)](#)

Section 127 Documents received for Deadline II

- s.127-021 [E.ON - Schedule of Affected Interests \(s127 s132\)](#)

Section 127 Documents received for Deadline VII

- s.127-022 [National Grid - Statement of Case](#)
s.127-023 [Network Rail - covering email](#)
s.127-024 [E.ON - s127 Application - with regards to Southern Water Services](#)
s.127-025 [E.ON -Letter to the Planning Inspectorate regarding s.127 application relating to Network Rail's interests](#)
s.127-026 [E.ON - s127 Application - with regards to South Eastern Power Networks Plc](#)
s.127-027 [E.ON - S127 Statement of Case with National Grid](#)
s.127-028 [E.ON - S127 Statement of Case National Grid Cover Letter](#)

Section 127 Plans received for Deadline VII

- s.127-029 [E.ON - s127 Application Plan 1 - with regards to Southern Water Services](#)
s.127-030 [E.ON - s127 Application Plan 2 - with regards to Southern Water Services](#)

- s.127-031 [E.ON - s127 Application Plan 3 - with regards to Southern Water Services](#)
- s.127-032 [E.ON - s127 Application Plan 4 - with regards to Southern Water Services](#)
- s.127-033 [E.ON - s127 Application Plan 1 - with regards to South Eastern Power Networks Plc](#)
- s.127-034 [E.ON - s127 Application Plan 2 - with regards to South Eastern Power Networks Plc](#)
- s.127-035 [E.ON - s127 Application Plan 3 - with regards to South Eastern Power Networks Plc](#)
- s.127-036 [E.ON - s127 Application Plan 4 - with regards to South Eastern Power Networks Plc](#)
- s.127-037 [E.ON - s127 Application Plan 5 - with regards to South Eastern Power Networks Plc](#)

- s.127-038 [E.ON - s127 Application Plan 6 - with regards to South Eastern Power Networks Plc](#)
- s.127-039 [E.ON - s127 Application Plan 7 - with regards to South Eastern Power Networks Plc](#)
- s.127-040 [E.ON - s127 Application Plan 8 - with regards to South Eastern Power Networks Plc](#)
- s.127-041 [E.ON - s127 Application Plan 9 - with regards to South Eastern Power Networks Plc](#)
- s.127-042 [E.ON - s127 Application Plan 10 - with regards to South Eastern Power Networks Plc](#)
- s.127-043 [E.ON - s127 Application Plan 11 - with regards to South Eastern Power Networks Plc](#)
- s.127-044 [E.ON - s127 Application Plan 12 - with regards to South Eastern Power Networks Plc](#)

Section 127 Documents received for Deadline VIII

- s.127-045 [E.ON - Letter regarding s127 and South Eastern Power Networks Ltd](#)
- s.127-046 [E.ON - Letter regarding s127 and Network Rail](#)
- s.127-047 [E.ON - Statement of Case relating to Southern Water Services Ltd](#)
- s.127-048 [National Grid - Response to Rule 17 Request](#)
- s.127-049 [Network Rail - Letter regarding position with E.ON](#)
- s.127-050 [South Eastern Power Networks Ltd](#)
- s.127-051 [South Eastern Power Networks - Letter confirming protective provisions agreement with applicant](#)
- s.127-052 [Southern Water Services - Letter regarding protective provisions agreement](#)
- s.127-053 [Southern Water Services Ltd](#)
- s.127-054 [E.ON- withdrawal of s.127 Application - Network Rail](#)
- s.127-055 [National Grid Response to Applicants Statement of Case](#)
- s.127-056 [E.ON - Covering Letter regarding Rule 17 Response](#)
- s.127-057 [E.ON - National Grid Protective Provisions for R17](#)
- s.127-058 [E.ON - NRIL Protective Provisions](#)
- s.127-059 [E.ON - R17 Update note on NRIL PPs](#)

- s.127-060 [E.ON - R17 Update note on SEPN PPs](#)
- s.127-061 [E.ON - R17 Update note on SWSL PPs](#)
- s.127-062 [E.ON - SEPN Protective Provisions](#)
- s.127-063 [E.ON - SWSL Protective Provisions](#)
- s.127-064 [E.ON - Update Document - National Grid \(7 Nov 2013\)](#)
- s.127-065 [E.ON - Update Document GlaxoSmithKline \(7 Nov 2013\)](#)
- s.127-066 [Network Rail Infrastructure Ltd](#)

Section 127 Documents received for Deadline X

- s.127-067 [E.ON - SoCG between Applicant and National Grid](#)
- s.127-068 [E.ON Letter relating to Southern Water Services Ltd withdrawal of representations](#)
- s.127-069 [E.ON - Letter relating to South Eastern Power Networks withdrawal of representation](#)
- s.127-070 [National Grid Electricity Transmission Plc](#)
- s.127-071 Not used
- s.127-072 [Southern Water Services Ltd](#)
- s.127-073 [E.ON - Appendix 3 - Protective Provisions agreed for benefit of South Eastern Power Networks](#)
- s.127-074 [E.ON - Appendix 4 - Protective Provisions for the benefit of Southern Water Services Limited](#)
- s.127-075 [South Eastern Power Networks](#)

Section 127 Documents received for Deadline XII

- s.127-076 [E.ON - NGET Rampion s127 withdrawal](#)
- s.127-077 [E.ON - Correspondence regarding protective provisions with NGET](#)
- s.127-078 [E.ON - Letter confirming agreement of protective provisions with NGET](#)
- s.127-079 [National Grid Electricity - Withdrawal of NGET Objection](#)
- s.127-080 [National Grid Electricity - Final Version of PPS](#)
- s.127-081 [National Grid Electricity - Comparison of Protective Provisions](#)

Section 127 Hearings

- s.127-082 [Agenda for Compulsory Acquisition and s127 Hearing](#)
- s.127-016 [Agenda for Hearing into Section 127 Applications on 27 November 2013](#)
- s.127-017 [s.127 Hearing Notification and Amendment to Timetable](#)
- s.127-018 [Action Points - s127 Hearing](#)

Section 132 Application

- s.132-001 [E.ON - s132 Application - Beach](#)
- s.132-002 [E.ON - s132 Application - Brooklands Pleasure Park](#)
- s.132-003 [E.ON - Addendum to Statement of Reasons](#)
- s.132-004 [E.ON - Appendix 2 - Special Category Open Space Plan](#)
- s.132-005 [E.ON - Book of Reference Part 5 only \(Public Open Space\)](#)
- s.132-006 [E.ON - Pro forma s132 Certificate](#)
- s.127-021 [E.ON - Schedule of Affected Interests \(s127 s132\)](#)

Re-Submission documents

PD-033 Letter regarding withdrawal of original application

Transboundary documents

PD-034 Reg 24 London Gazette notice

PD-035 Transboundary Screening Matrix

PD-036 Transboundary Re-screening Matrix

Report on the Implications for European Sites (RIES)

PD-037 Report on the Implications for European Sites (RIES)

APPENDIX B – OTHER CONSENTS REQUIRED

List of other consents derived from the applicant's list of required consents submitted for Deadline VII (REP-367)

AA and Habitat Regulations Assessment
Coast Station Radio Licence
Decommissioning scheme
Energy generation licence
European Protected Species (EPS) Licence (if required)
F10 – Notification of Construction Project
Marine Licence – moorings
Safety Zones
Building Regulation approval (if necessary)
Environmental Permit for water discharge or waste operations / registration of exempt waste operations and water discharges (as necessary)
European Protected Species Licence
Flood Defence Consent (for structures in, under or over a main river / permanent culverts)
Land Drainage Consent (for structures in ordinary watercourses / permanent culverts)
Licence for work affecting badgers
Notice of Street Works
Permit for transport of abnormal loads (if necessary)
Planning permission for 400kV feeder bays at National Grid substation
Removal of vegetation close to or on a riverbank
Section 127 Application to the Secretary of State in relation to National Grid interests
Section 127 Application to the Secretary of State in relation to Network Rail interests
Section 127 Application to the Secretary of State in relation to Southern Water interests
Section 127 Application to the Secretary of State in relation to South Eastern Power Network PLC (SEPN) interests
Section 132 Applications to the Secretary of State
Temporary Road Traffic Orders (if construction phase requires closure of any public highway)
Water Abstraction Licence (if required)
Waste Production
Undertakings given to support application

APPENDIX C - EVENTS IN THE EXAMINATION

The table below lists the main events occurring during the examination and the main procedural decisions taken by the ExA.

Date	Examination Event
Thursday 18 July 2013	Preliminary Meeting and start of the Examination
Thursday 25 July 2013	Issue by the Examining Authority: <ul style="list-style-type: none"> - Examination timetable - Examining Authority's first Questions (EAQs) - Requests for Statements of Common Ground (SoCG) - Submission by the applicant of any documents relating to the applicant's proposed corrections and omissions to the application - Submission by any other party of corrections and omissions in relation to a relevant representation
Wednesday 7 August 2013	Issue by the Examining Authority: <ul style="list-style-type: none"> - Notification by ExA of date, time and place for hearings relating to the Development Consent Order and Deemed Marine Licence
Friday 9 August 2013	Deadline I for receipt by the Examining Authority: <ul style="list-style-type: none"> - Local Impact Reports
Thursday 15 August 2013	Deadline II for receipt by the Examining Authority: <ul style="list-style-type: none"> - Written Representations (WRs) including any summaries of Written Representations of more than 1500 words - Any summaries of Relevant Representations (RRs) exceeding 1500 words - Responses to ExA's first written questions (EAQs) - Updated matrices prepared by the applicant to inform the Report on Implications for European Sites - Statements of Common Ground (SoCGs) - Comments on Relevant Representations (RRs) - Notification of wish to be heard at Open Floor (OF) Hearing by Interested Parties - Notification of wish to make oral representation at the Issue Specific Hearing

	<ul style="list-style-type: none"> - Notification of wish to make oral representation at Compulsory Acquisition (CA) Hearing - Notification of wish to attend site visit in the company of interested parties and any representations relating to proposed locations to visit - Deadline for Statutory Parties and persons in certain categories with interest in land to inform the ExA of a wish to be considered as an Interested Party
Wednesday 21 August 2013	<p>Issue by the Examining Authority:</p> <ul style="list-style-type: none"> - Notification by ExA of date, time and place for Open Floor Hearing - Notification of time and place of ExA's inspection of a site to which the application/specific matters relate in the company of Interested Parties
Wednesday 28 and Thursday 29 August 2013	Issue Specific Hearings relating to the Development Consent Order and Deemed Marine Licence.
Thursday 5 September 2013 by 12pm	<p>Deadline III for receipt by the Examining Authority:</p> <ul style="list-style-type: none"> - Post-Hearing documents including any written summary of an oral case put at any Development Consent Order and Deemed Marine Licence Hearings and any documents/amendments requested by the ExA - Comments on Local Impact Reports
Wednesday 11 and Thursday 12 September 2013	Open Floor Hearings
Thursday 12 September 2013 by 12pm	<p>Deadline IV for receipt by the Examining Authority:</p> <ul style="list-style-type: none"> - Comments on Written Representations (WRs) - Comments on responses to ExA's first written questions - Comments on applicant's matrices to inform the Report on the Implications for European Sites - Comments on Statements of Common Ground
Thursday 19 September 2013 by 12pm	<p>Deadline V for receipt by the Examining Authority:</p> <ul style="list-style-type: none"> - Post-Hearing documents including any written summary of an oral case put at any Open Floor Hearings and any documents/amendments requested by the ExA
Tuesday 24 September 2013	<p>Issue by the Examining Authority:</p> <ul style="list-style-type: none"> - Examining Authority's second written questions (EAQs)

Wednesday 25 and Thursday 26 September 2013	Site Visits (Accompanied) ExA's inspection of onshore sites to which the application/specific matters relate in the company of Interested Parties
Wednesday 9 October 2013 by 12pm	Deadline VI for receipt by the Examining Authority: <ul style="list-style-type: none"> - Responses to comments on matrices prepared by the applicant to inform the Report on Implications for European Sites
Wednesday 9 October 2013	Issue by the Examining Authority: <ul style="list-style-type: none"> - Notification by ExA of date, time and place for Issue Specific Hearings
Tuesday 15 October 2013 by 5pm	Deadline VII for receipt by the Examining Authority: <ul style="list-style-type: none"> - Responses to ExA's second written questions (EAQs)
Wednesday 16 October 2013	Issue by the Examining Authority: <ul style="list-style-type: none"> - Notification by ExA of date, time and place for hearings relating to the Development Consent Order and Deemed Marine Licence
Monday 21 October 2013	Issue by the Examining Authority: <ul style="list-style-type: none"> - Rule 17 Letter requesting further information
Tuesday 29th October 2013	Further Deadline for receipt by the Examining Authority: <ul style="list-style-type: none"> - Responses to Rule 17 Request
Wednesday 30 October 2013	Issue Specific Hearing relating to Biodiversity, biological environment, ecology including Habitats Regulation Assessment
Thursday 31 October 2013	Issue Specific Hearing relating to Landscape/Seascape and Visual Impact
Friday 1 November 2013	Issue Specific Hearing relating to Socio-economic impacts including commercial fishing
Wednesday 6 November 2013	Issue by the Examining Authority: <ul style="list-style-type: none"> - Notification by ExA of date, time and place for Compulsory Acquisition Hearings
Wednesday 6 and Thursday 7 November 2013	Issue Specific Hearings relating to the Development Consent Order and Deemed Marine Licence.

Tuesday 12 November 2013	Issue by the Examining Authority: <ul style="list-style-type: none"> - Notification by ExA of date, time and place for any other Hearings
Tuesday 12 November 2013 by 12pm	Deadline VIII for receipt by the Examining Authority: <ul style="list-style-type: none"> - Post-Hearing documents including any written summary of an oral case put at any Issue Specific Hearings and any documents/amendments requested by the ExA - Responses to Rule 17 Request regarding submission of protective provisions and updated Book of Reference
Thursday 14 November 2013	Issue by the Examining Authority: <ul style="list-style-type: none"> - Notification by ExA of date, time and place for hearings relating to the Development Consent Order and Deemed Marine Licence
Wednesday 27 November 2013	Compulsory Acquisition Hearing
Thursday 28 November 2013 by 12pm	Deadline IX for receipt by the Examining Authority: <ul style="list-style-type: none"> - Comments on responses to ExA's second written questions (EAQ)
Wednesday 4 December 2013	Issue Specific Hearing relating to Biodiversity, biological environment, ecology including Habitats Regulation Assessment
Thursday 5 December 2013	Deadline X for receipt by the Examining Authority: <ul style="list-style-type: none"> - Final Statements of Common Ground (SoCGs) - Post-Hearing documents including any written summary of an oral case put at any Compulsory Acquisition Hearings and any documents/amendments requested by the ExA
Thursday 5 and Friday 6 December 2013	Issue Specific Hearings relating to the Development Consent Order and Deemed Marine Licence.
Tuesday 10 December 2013 by 5pm	Deadline XI for receipt by the Examining Authority: <ul style="list-style-type: none"> - Post-Hearing documents including any written summary of an oral case put at any Development Consent Order and Deemed Marine Licence Hearings and any documents/amendments requested by the ExA
Friday 13 December 2013	Issue by the Examining Authority: <ul style="list-style-type: none"> - ExA's draft Development Consent Order for comments - Report on the Implications for European Sites, including the matrices prepared by the ExA for consultation

Wednesday 8 January 2014 by 12pm	Deadline XII for receipt by the Examining Authority: <ul style="list-style-type: none"> - Any written comments on the ExA's draft Development Consent Order. - Any written comments on Report on the Implications for European Sites, including the matrices prepared by the ExA
Monday 13 January 2014	Issue by the Examining Authority: <ul style="list-style-type: none"> - Rule 17 Letter requesting further information
Saturday 18 January 2014	Further Deadline for receipt by the Examining Authority: <ul style="list-style-type: none"> - Responses to Rule 17 Request
Saturday 18 January 2014	Close of examination

Section 127 Timetable (Relating to National Grid and Network Rail)

Date	Examination event
Tuesday 15 October 2013	Deadline for receipt and exchange of: <ul style="list-style-type: none"> - Full written statement of case from each party
Wednesday 6 November 2013	Final notification of the date, time and place for any: <ul style="list-style-type: none"> - s127 hearing
Tuesday 12 November 2013	Deadline for receipt and exchange of: <ul style="list-style-type: none"> - Any written response to the full written statement of case
Wednesday 27 November 2013	s127 hearing
Thursday 5 December 2013	Deadline for receipt and exchange of: <ul style="list-style-type: none"> - Any written summary of the case put orally at any s127 hearing - Final written confirmation of s127 position of the party concerned

Section 127 Timetable (Relating to Southern Water and South Eastern Power Networks)

Date	Examination event
Thursday 31 October 2013	Deadline for receipt and exchange of: <ul style="list-style-type: none"> - Full written statement of case from each party
Wednesday 6 November 2013	Final notification of the date, time and place for any: <ul style="list-style-type: none"> - s127 hearing
Wednesday 12	Deadline for receipt and exchange of:

November 2013	<ul style="list-style-type: none">- Any written response to the full written statement of case
Wednesday 27 November 2013	s127 hearing
Thursday 5 December 2013	Deadline for receipt and exchange of: <ul style="list-style-type: none">- Any written summary of the case put orally at any s127 hearing- Final written confirmation of s127 position of the party concerned

APPENDIX D - LIST OF ABBREVIATIONS

AA – Appropriate Assessment
AEZ – Archaeological Exclusion Zones
AONB – Area of Outstanding Natural Beauty
APFP - Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
ASNW - Ancient semi-natural woodland
BAP - Biodiversity Action Plan
BDMP - Biologically Defined Minimum Populations
BHCC – Brighton and Hove City Council
BOA -Biodiversity Opportunity Areas
BoR – Book of Reference
CA – Compulsory Acquisition
CRM – Collision Risk Modelling
CEMP – Construction Environmental Management Plan
CTMP – Construction Traffic Management Plan
DAS- Design and Access Statement
DCO – Development Consent Order
DECC – Department of Energy and Climate Change
DML - Deemed Marine Licence
DPD – Development Plan Document
DEFRA – Department for Environmental Food and Rural Affairs
EAONE – East Anglia One
E.ON - E.ON Climate & Renewables UK Rampion Offshore Wind Limited
EEA – European Economic Area
EH – English Heritage
EIA – Environment Impact Assessment
ELMP - Ecological and Landscape Management Plan
EMF- Electro-magnetic Field
EPR - Infrastructure Planning (Examination Procedure) Rules 2010
EPS – European Protected Species
ES – Environmental Statement
ExA - Examining Authority
FHBC – Flamborough Head and Bempton Cliffs
FOCI - feature of conservation interest
GSK – GlaxoSmithKline Plc
GWh – Gigawatt Hours
HAP- Habitat Action Plans
HDD – Horizontal Directional Drilling
HRA – Habitats Regulation Assessment
HV - High Voltage
ICNIRP – Non-Ionizing Radiation Protection
IBGS - Inward Battered Guide Structure
IP – Interested Party
ISH – Issue Specific Hearing
IROPI - Imperative Reasons of Overriding Public Interest
ITZ – Inshore Traffic Zone
KFE – Kentish Flats Extension
LAT – Lowest Astronomical tide
LDF – Local Development Framework
LIR – Local Impact Report

LNR - Local Nature Reserves
LSE – Likely Significant Effects
LVIA – Landscape and Visual Impacts Assessment
MCA – Maritime and Coastguard Agency
MCZs – Marine Conservation Zones
MMMP – Marine Mammal Mitigation Protocol
MMO – Marine Management Organisation
MPS - Marine Policy Statement
MSFD – Marine Strategy Framework Directive
MSNCI -Marine Sites of Nature Conservation Importance
NE - Natural England
NERC – Natural Environment and Rural Communities Act
NGET – National Grid Electricity Transmission PLC
NI - National Infrastructure
NIA - Nature Improvement Area
NPA – National Park Authority
NPACA – National Parks and Access to the Countryside Act 1949
NPPF – National Planning Policy Framework
NPPG – National Planning Practice Guidance
NPS – National Policy Statement
NRIL – Network Rail Infrastructure Ltd
NSER - No significant effects report
NSIP – Nationally Significant Infrastructure Project
NT – National Trust
OFTO – Offshore Transmission Owner
OWF – Offshore Wind Farm
PA2008 – Planning Act 2008
PBR - Potential Biological Removal
PHE – Public Health England
PPA - Planning Performance Agreement
PPG – Planning Policy Guidance
PPS – Planning Policy Statements
PSMS - Protected Species Method Statements
RIES – Report on the Implications for European Sites
rMCZs – Recommended Marine Conservation Zones
SAC – Special Areas of Conservation
SAS – Surfers Against Sewage
SCI – Site of Community Importance
SDNPA – South Downs National Park Authority
SDWA - The South Downs Way Ahead
SEPN – South Eastern Power Networks
SLVIA – Seascape, Landscape and Visual Impact Assessment
SNCI - sites of nature conservation importance
SNH – Scottish National Heritage
SoCG – Statement of Common Ground
SoS – Secretary of State
SPA – Special Protection Area
SSMS – Site Specific Method Statement
SSSI – Sites of Special Scientific Interest
SWS – Southern Water Services
SWT- Sussex Wildlife Trust
TMMP - Tottington Mount Management Plan

TSS - Traffic Separation Scheme
UKPN – UK Power Networks
UU – Unilateral Undertaking
WSCC – West Sussex County Council
WSI – Written Scheme of Investigation
WTG - Wind Turbine Generators
ZTV – Zone of Theoretical Visibility

201X No.

INFRASTRUCTURE PLANNING

The Rampion Offshore Wind Farm Order 201X

<i>Made</i>	***201●
<i>Laid before Parliament</i>	***201●
<i>Coming into force</i>	***201●

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 - PART 1 — Licensed Marine Activities
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WHEREAS an application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) made under sections 37, 42, 48, 51, 56, 58, 59 and 232 of the Planning Act 2008 (“the 2008 Act”)(b) for an Order under sections 37, 55, 115, 120, 121, 122, 140 and 149A of the 2008 Act;

AND whereas the application was examined by an examining authority appointed by the Secretary of State pursuant to Chapter 4 of the 2008 Act;

AND whereas the examining authority, having considered the national planning statements relevant to the application and concluded that the application accords with these statements as set out in section 104(3) of the 2008 Act;

AND whereas the examining authority, having considered the objections made and not withdrawn and the application with the documents that accompanied the application, has recommended that the decision-maker make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change to the proposals;

AND whereas notice of the decision-maker’s determination was published [●];

NOW THEREFORE, as the decision-maker in exercise of the powers conferred by sections 114, 115, 120, 121, 122 and 149A of the 2008 Act the Secretary of State makes the following Order:

Citation and commencement

1. This Order may be cited as the Rampion Offshore Wind Farm Order and shall come into force on [●] 201[●].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(c);

“the 1965 Act” means the Compulsory Purchase Act 1965(d);

“the 1980 Act” means the Highways Act 1980(e);

-
- (a) S.I. 2009/2264 as amended by the Localism Act (Infrastructure Planning) (Consequential Amendments) Regulations 2012 S.I. 2012/635 and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 S.I.2013/522
- (b) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).
- (c) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (d) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4, to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.150). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (e) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I.2006/1177, by section 4 of, and paragraph

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(a);

“the 1990 Act” means the Town and Country Planning Act 1990(b);

“the 1991 Act” means the New Roads and Street Works Act 1991(c);

“the 2004 Act” means the Energy Act 2004(d);

“the 2008 Act” means the Planning Act 2008(e);

“the 2009 Act” means the Marine and Coastal Access Act 2009(f);

“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;

“access to works plan” means the plan certified as the access to works plan by the decision-maker for the purposes of this Order;

“ancillary works” means the ancillary works described in Part 2 of **Schedule 1** (ancillary works) and which are not development within the meaning of section 32 of the 2008 Act;

“approval authority” means a person or body that is responsible for approving details pursuant to a requirement in Part 3 of **Schedule 1** (requirements);

“array” means Work Nos. 1 and 2;

“authorised development” means the development and associated development described in Part 1 of **Schedule 1** (authorised development), 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;

“book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“CAA” means the Civil Aviation Authority constituted by the Civil Aviation Act 1982;

“cable ducts” means conduits for the installation of cables;

“carriageway” has the same meaning as in the 1980 Act;

45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 65(5) of the Transport and Works Act 1992 and was amended by S.I.2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

- (a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.
- (b) 1990 c.8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act 2003 c. 21, and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule 17. to, that Act. Sections 272 to 274 were also amended by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.
- (c) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (d) 2004 c.20. Section 105 was amended by section 69 of the Energy Act 2008 (c.32).
- (e) 2008 c.29
- (f) 2009 c.23

“circuit” means up to three cables installed inside separate cable ducts, which are grouped together in a trefoil arrangement;

“commence” means, in relation to works seaward of MHWS, beginning to carry out any licensed marine activities authorised by the deemed marine licences at **Schedule 13** (deemed licence under the Marine and Coastal Access Act 2009 – array) and **Schedule 14** (deemed licence under the Marine and Coastal Access Act 2009 – export cables) other than pre-construction surveys or monitoring 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 (excluding stripping of soil and the removal of trees and hedgerows), demolition work, 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, the temporary display of site notices or advertisements and “commencement” shall be construed accordingly;

“competent authority” means the competent authority as defined in Regulation 7 of the Conservation of Habitats and Species Regulations 2010/490

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“connection works” means Work Nos. 3B to 32 and any related further associated development including, in relation to cable laying, jointing bays, manholes, marker posts and other works associated with cable laying;

“construction compound” means a secure construction site associated with the connection works including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“construction laydown area” means a temporary secure storage area associated with the connection works that is moveable and positioned at locations along the working width, for materials, plant and equipment, which may include vehicle parking, wheel washing facilities and mobile units comprising access control room and welfare facilities;

“decision-maker” has the same meaning as in section 103 of the 2008 Act;

“deemed array marine licence” means the licence set out in **Schedule 13** (deemed licences under the Marine and Coastal Access Act 2009 – array) and deemed by **article 11** (deemed marine licence under the Marine and Coastal Access Act 2009) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“deemed marine licences” means the deemed array marine licence and/or the deemed export cables marine licence;

“deemed export cables marine licence” means the licence set out in **Schedule 14** (deemed licences under the Marine and Coastal Access Act 2009 – export cables) and deemed by **article 11** (deemed marine licence under the Marine and Coastal Access Act 2009) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“environmental statement” means the document certified as the environmental statement by the decision-maker for the purposes of this Order and submitted with the application on 1 March 2013;

“export cables” means Work No 3A;

“footpath stopping up and diversion plan” means the plan certified as the footpath stopping up and diversion plan by the decision-maker for the purposes of this Order;

“gravity base foundation” means a structure principally of concrete, steel or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or skirts, including associated sea bed preparation, scour protection, J-tubes, corrosion protection

systems, boat landings comprising an access ladder with vertical boat fenders fitted either side and work platforms and equipment;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“horizontal directional drilling compound” means a secure construction site associated with the connection works where horizontal directional drilling is proposed including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, wheel washing facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“horizontal directional drilling exit compound” means a secure construction site associated with the connection works at the exit point where horizontal directional drilling is proposed including hard standings, lay down and storage areas for construction materials and equipment, areas for temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“IBGS (Inward Battered Guide Structure) foundation” means a jacket-type concrete, steel or steel and concrete structure which is pre-fabricated with three tubular raking legs, which is installed over a pre-driven central pile, with up to three smaller diameter raking piles driven through the legs to pin the foundation to the seabed, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

“important hedgerow plan” means the plan certified as the important hedgerow plan by the decision-maker for the purposes of this Order;

“jacket foundation” means a jacket/lattice type structure constructed of concrete, steel or steel and concrete which is fixed to the seabed at three or more points with driven or pre-installed piles or suction cans, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

“land plan” means the plan certified as the land plan by the decision-maker for the purposes of this Order;

“LAT” means lowest astronomical tide;

“maintain” includes inspect, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works and any component part of any wind turbine generator or offshore substation described in Part 1 of **Schedule 1** (authorised development) to the extent assessed in the environmental statement; and “maintenance” shall be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“mean low water springs” or “MLWS” means the lowest level which spring tides reach on average over a period of time;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“measures of success for discharge of requirements” means the document certified as the measures of success for discharge of requirements by the decision-maker for the purposes of this Order;

“MMO” means the Marine Management Organisation;

“monopile foundation” means a steel, concrete, or steel and concrete large diameter pile, typically cylindrical, driven and/or drilled into the seabed, including associated scour protection, transition piece, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

“offshore substation” means an offshore platform constructed of steel or concrete or steel and concrete with single or multiple decks housing major electrical equipment including high

voltage transformers, switchgear, control rooms, cabling and busbars, lightning protection masts, communications masts, cable management, back-up generators, fuel storage, emergency accommodation, workshops and stores, helihoist facilities, cranes and other associated electrical and ancillary equipment;

“onshore substation” means an onshore substation facility accommodated within a compound containing electrical equipment including high voltage transformers, switchgear, reactive compensation equipment, harmonic filters, cables, lightning protection masts, control buildings, communications masts, back-up generators, fuel storage, access roads, car parking and hardstanding, fencing and other associated equipment and structures;

“onshore substation design and access statement” means the document certified as the onshore substation design and access statement for the purposes of this Order;

“open access land plan” means the plan certified as the open access land plan by the decision-maker for the purposes of this Order;

“Order land” means the land shown on the land plan which is within the limits of land to be acquired or used and described in the book of reference;

“Order limits” means the limits shown on the works plan within which the authorised project may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 2 of Part 1 of **Schedule 1** (authorised development) of this Order;

“outline arboricultural method statement” means the document certified as the outline arboricultural method statement for the purposes of this Order;

“outline cable specification and installation plan” means the document certified as the outline cable specification and installation plan for the purposes of this Order;

“outline construction and environmental management plan” means the document certified as the outline construction environmental management plan for the purposes of this Order;

“outline construction traffic management plan” means the document certified as the outline construction traffic management plan for the purposes of this Order;

“outline diver mitigation plan” means the document certified as the outline diver mitigation plan for the purposes of this Order;

“outline ecological and landscape management plan” means the document certified as the outline ecological and landscape management plan for the purposes of this Order;

“outline fisheries liaison strategy” means the document certified as the outline fisheries liaison strategy for the purposes of this Order;

“outline hedgerows management plan” means the document certified as the outline hedgerows management plan for the purposes of this Order;

“outline construction noise management plan” means the document certified as the outline construction noise management plan for the purposes of this Order;

“outline offshore written scheme of archaeological investigation” means the document certified as the outline offshore written scheme of archaeological investigation by the decision-maker for the purposes of this Order;

“outline onshore written scheme of archaeological investigation” means the document certified as the outline onshore written scheme of archaeological investigation by the decision-maker for the purposes of this Order;

“outline scour protection management and cable armouring plan” means the document certified as the outline scour protection management and cable armouring plan by the decision-maker for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in Section 7 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.34). There are other amendments to the 1981 Act which are not relevant to this Order.

“piling restrictions plan” means the plan certified as the piling restrictions plan by the decision-maker for the purposes of this Order;

“public rights of way strategy” means the document certified as the public rights of way strategy for the purposes of this Order;

“public rights of way temporary closure plan” means the plan certified as the public rights of way temporary closure plan by the decision-maker for the purposes of this Order;

“relevant highway authority” means West Sussex County Council;

“relevant planning authority” means the authority as specified in requirements 9 to 41, being West Sussex County Council, the South Downs National Park Authority or Mid Sussex District Council;

“requirements” means those matters set out in Part 3 of **Schedule 1** (requirements) to this Order;

“Secretary of State for Transport” includes the Highways Agency acting on behalf of the Secretary of State for Transport;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

“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 part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“suction can” means a steel cylindrical structure which is fixed to the base of the foundation and partially penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“suction caisson foundation” means a large diameter steel cylindrical structure which partially penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential, attached to a vertical central column which supports the transition piece, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access platform(s) and equipment;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“transition pit” means an underground pit where the offshore export cables comprised in Work No. 3A are jointed to the connection works;

“tree protection order plan” means the plan certified as the tree protection order plan by the decision-maker for the purposes of this Order;

“Trinity House” means The Corporation of Trinity House of Deptford Strond;

“tripod foundation” means a steel or concrete or steel and concrete jacket/lattice type structure consisting of three main legs linked by cross-braces supporting a single central support for the transition piece which is fixed to the seabed with driven or pre-installed piles or suction cans, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“undertaker” means E.ON Climate & Renewables UK Rampion Offshore Wind Limited;

“vessel” includes every description of vessel, however propelled or moved, and includes a jack-up barge, floating crane, 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, ditches, drains, creeks, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“wind turbine generator” or “WTG” means a structure comprising a tower, rotor with three horizontal axis blades connected at the hub, nacelle containing mechanical and electrical equipment, ancillary equipment including access ladders and platforms, lifts, cables, corrosion protection systems, maintenance equipment, helihoist facilities and other associated equipment, fixed to a foundation;

“working width” means the construction width of the onshore cable corridor including haul route, spoil storage and temporary drainage during installation of circuits and/or cable ducts; and

“works plan” means the plan certified as the works plan by the decision-maker for the purposes of the Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate, save in respect of the parameters referred to requirements 2 to 5 and 10 in Part 3, **Schedule 1** (requirements), conditions 1 to 4 in Part 2, **Schedule 13** (deemed licence under the Marine and Coastal Access Act 2009 – array) and condition 3 in Part 2, **Schedule 14** (deemed licence under the Marine and Coastal Access Act 2009 – export cables).

(4) 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.

(5) Unless otherwise stated, references in this Order to points identified by letters are to be construed as references to the points so lettered on the works plan.

(6) The expression “includes” shall be construed without limitation.

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 within the Order limits.

(2) Subject to the requirements, Work Nos. 1 to 3A shall be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 3B to 32 shall be constructed anywhere within the Order limits landward of MLWS.

Power to maintain authorised project

4. 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.

Operation of electricity generating station

5.—(1) The undertaker is hereby authorised to operate the generating station comprised in the authorised development.

(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.

Requirements, Appeals etc

6.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition

imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Benefit of the Order

7.—(1) Subject to the provisions of this article, the undertaker may with the 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 referred to in (3) below) and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (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 this Order (excluding the deemed marine licences referred to in (3) below) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (6), shall include references to the transferee or lessee.

(3) The undertaker may with the written consent of the MMO—

- (a) where an agreement has been made in accordance with paragraph (1)(a), transfer to the transferee the whole of the deemed array marine licence and/or the whole of the deemed export cable marine licence 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 (1)(b), grant to the lessee, for the duration of the period mentioned in paragraph (1)(b), the whole of the deemed array marine licence and/or the whole of the deemed export cable marine licence and such related statutory rights as may be so agreed.

(4) 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)—

- (a) 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;
- (b) 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 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 or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee or lessee.

(5) The provisions of **article 15** (street works), **article 16** (temporary stopping up of streets), **article 23** (compulsory acquisition of land), **article 25** (compulsory acquisition of rights), **article 31** (temporary use of land for carrying out the authorised project) and **article 32** (temporary use of land for maintaining the authorised project) shall have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and is also—

- (a) in respect of Works No. 3B to 32 a person who holds a licence under the Electricity Act 1989, or
- (b) in respect of functions under **article 15** (street works) relating to a street, a street authority.

(6) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) or (3) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Application and modification of legislative provisions

8.—(1) Regulation 6 of the Hedgerows Regulations 1997(a) shall be modified so as to read for the purposes of this Order only as if there were inserted after Regulation (1)(j) the following:

“(k) or for carrying out development which has been authorised by a development consent pursuant to the Planning Act 2008.”

Public rights of navigation

9.—(1) Subject to paragraph (2), the rights of navigation over the places in the sea where any of the wind turbine generators and offshore substations, including their foundations, are located within territorial waters, shall be extinguished.

(2) The extinguishment of the rights of navigation over the places identified in paragraph (1) shall take effect 14 days after the undertaker has submitted a plan to the Secretary of State showing the precise locations of the foundations of each of any relevant wind turbine generators and offshore substations to be constructed as part of the authorised development within territorial waters.

(3) In respect of the location of any individual wind turbine generator or offshore substation, paragraph (1) shall cease to have effect as soon as that wind turbine generator or offshore substation has been decommissioned and permanently removed, and the relevant rights of navigation shall resume.

(4) The plan submitted in accordance with paragraph (2) shall be published by the undertaker as required by the Secretary of State.

Abatement of works abandoned or decayed

10.—(1) 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.

(2) In circumstances where the undertaker is required to remove the array, without prejudice to any obligations on the undertaker deriving from any notice served under section 105(2) of the 2004 Act, the notice may also require the restoration of the site of the relevant part of the array to a safe and proper condition within such area and to such an extent as may be specified in the notice.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in doing so shall be recoverable from the undertaker.

(a) S.I 1997/1160

Deemed marine licences under the Marine and Coastal Access Act 2009

11. The undertaker is granted deemed licences under Part 4 Chapter 1 of the 2009 Act to carry out the works and make the deposits specified in Part 1 of **Schedule 13** (deemed licence under Marine and Coastal Access Act 2009 – array) and **Schedule 14** (deemed licence under Marine and Coastal Access Act 2009 – export cables), subject to the conditions set out in Part 2 of those Schedules.

Saving for Trinity House

12. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown Rights

13.—(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—

- (a) 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)—
 - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to Her 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
 - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

Defence to proceedings in respect of statutory nuisance

14.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act 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 or maintenance 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 site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or

(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(b) 1974 c.40. 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 this Order.

- (ii) is a consequence of the construction or maintenance 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 which is being used in accordance with a scheme of monitoring and attenuation of noise to be agreed with West Sussex County Council under **requirement 35** (control of noise during operational phase) in Part 3 of Schedule 1 (requirements); or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.

Street works

15.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in **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 under it;
- (b) tunnel or bore under the street;
- (c) place apparatus under the street;
- (d) maintain apparatus under the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

(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) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

(5) All works to and beneath the A27 trunk road shall be designed and constructed in accordance with the Design Manual for Roads and Bridges.

Temporary stopping up of streets

16.—(1) Subject to paragraphs (2) and (3), the undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street within the Order limits and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) The undertaker shall not temporarily stop up, alter or divert any street without the consent of the street authority which may attach reasonable conditions to any consent.

(4) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Public rights of way

17.—(1) Subject to paragraph (2), the undertaker may, in connection with the carrying out of the authorised project, extinguish the section of the public right of way (being a footpath) specified in columns (2) to (3) of Schedule 3 (footpath to be permanently stopped up) to the extent specified in column (4), by reference to the letters shown on the footpath stopping up and diversion plan.

(2) The public right of way specified in paragraph (1) shall not be extinguished under this article unless the new footpath specified on the footpath stopping up and diversion plan is first provided by the undertaker, to the reasonable satisfaction of the relevant highway authority.

(3) The undertaker may, in connection with the carrying out of the authorised project temporarily stop up each of the public rights of way specified in columns (2) of **Schedule 4** (rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the letters shown on the public rights of way temporary closure plan.

Access to works

18. The undertaker may, for the purposes of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of **Schedule 5** (access to works); and
- (b) with the approval of West Sussex County Council (or instead the Secretary of State for Transport where access is directly to or from a trunk road), 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.

Agreements with street authorities

19.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) any temporary stopping up, 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 15(1)** (street works).

(2) Such an agreement may, without prejudice to the generality of 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.

Discharge of water

20.—(1) 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 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 paragraph (1) shall be 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 shall 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 shall not be unreasonably withheld.

(4) The undertaker shall not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river without the prior consent of the Environment Agency.

(6) The undertaker shall 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 of the Environmental Permitting (England and Wales) Regulations 2010(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 Water Resources Act 1991, have the same meaning as in that Act.

Authority to survey and investigate the land

21.—(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 and—

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes 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;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) shall, if so required on entering the land, produce written evidence of their authority to do so; and

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37), and amended by section 32 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010 (date in force to be appointed see section 49(3)(h)(i)). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2010/675, as amended by the Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (SI 2011/2043), the Environmental Permitting (England and Wales) (Amendment No. 2) Regulations 2011 (SI 2011/2933), the Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (SI 2012/630), the Controlled Waste (England and Wales) Regulations 2012 (S.I. 2012/811).

- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

but such consent shall not be unreasonably withheld.

(5) As soon as practicable following the exercise of any powers under paragraph (1), any apparatus or equipment shall be removed and the land shall be restored to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall 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.

Temporary suspension of public access to Access Land

22.—(1) 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 or maintaining the connection works as the undertaker considers necessary or expedient; and
- (b) close to the public the relevant parts of the access land as are affected by the authorised project during construction or maintenance of the connection works.

(2) No fewer than 28 days before exercising any power under paragraph (1), the undertaker shall notify the South Downs National Park Authority of its intention to exercise such powers.

(3) During the period of any closure referred to in paragraph (1)(b), all rights of access to the public shall be suspended.

(4) The power conferred by paragraph (1) shall 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.

(5) As soon as practicable following the exercise of any powers under paragraph (1), any temporary works, plant, machinery and fencing shall be removed and access to the access land shall be restored.

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 paragraph (2) of **article 25** (compulsory acquisition of rights) and paragraph (8) of **article 31** (temporary use of land for carrying out the authorised project).

Time limit for exercise of authority to acquire land compulsorily

24.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the 1981 Act as applied by article 30 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by **article 31** (temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent 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

25.—(1) The undertaker may acquire compulsorily such rights over the Order land or impose restrictive covenants affecting the land 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 already in existence.

(2) Subject to the provisions of this article, **article 26** (private rights), **article 31** (temporary use of land for carrying out the authorised project), **article 32** (temporary use of land for maintaining authorised project) and **article 33** (statutory undertakers), in the case of the Order land specified in column (1) of **Schedule 7** (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights or the imposition of restrictive covenants affecting the land for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act, as substituted by paragraph 5 of **Schedule 8** (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right or restrictive covenant over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

(4) **Schedule 8** (modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants) shall have 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 restrictive covenants.

(5) In any case where the acquisition of new rights under paragraph (1) 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 to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under 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

26.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order shall be 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 earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this article (and including those lands included in column (1) of Schedule 7 (land in which only new rights etc. may be acquired)) shall be extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of the acquisition of the right 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 earliest.

(3) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order shall be 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 under this article shall be entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 33 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall 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 entry onto it; or

(iii) the undertaker's taking temporary possession of it,

that any or all of those paragraphs shall 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 in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it shall be 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 trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

27.—(1) The 1981 Act shall apply as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated.”

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act in the 1981 Act shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

28.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 23 (compulsory acquisition of land) or article 25 (compulsory acquisition of rights) 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 the land under paragraph (1), the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 29 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

29.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

30.—(1) The undertaker may enter on and appropriate so much of the subsoil of any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by 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) Paragraph (2) shall 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 paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing 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

31.—(1) The undertaker may, in connection with the carrying out of the authorised project—

- (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 relating to the part of the authorised project specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings 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 with access to the working site in connection with the authorised project; and
- (e) construct any works, or to use the land, as specified in relation to that land in column 3 of Schedule 9 (land of which temporary possession may be taken), or any mitigation works.

(2) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article 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 (land of which temporary possession may be 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.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker shall 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 any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect 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 paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker shall not be precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 25 (compulsory acquisition of rights); or
- (b) acquire any part of the subsoil (or rights in the subsoil) of that land under article 28 (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply 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).

Temporary use of land for maintaining authorised project

32.—(1) Subject to 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 limits 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) Paragraph (1) shall 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) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(4) 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.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall 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.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect 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 maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply 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).

(11) In this article “the maintenance period”, in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project first exports electricity to the national electricity transmission network.

Statutory undertakers

33. Subject to the provisions of **Schedule 12** (protective provisions) 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 limits of the land to be acquired and described in the book of reference;
- (b) extinguish or relocate the rights of, or remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Recovery of costs of new connections

34.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under **article 33** (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be 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) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under **article 33** (statutory undertakers), 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,

shall be 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 sewerage disposal plant.

(3) This article shall not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

Application of landlord and tenant law

35.—(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 shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply 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

36. Development consent granted by this Order shall be 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 operational land for the purposes of that Act).

Felling or lopping of trees and removal of hedgerows

37.—(1) Subject to **requirement 11 (provision of landscaping)**, **requirement 28** (ecological and landscape management plan), **requirement 29** (ecological and landscape management plan for the South Downs National Park), **requirement 37** (European protected species onshore) and **requirement 38** (European protected species within the South Downs National Park), the undertaker may fell or lop any tree or shrub within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall 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 paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised project –

- (a) subject to requirement 11 (provision of landscaping) and paragraph (2) above, remove any hedgerows within the Order limits 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 10** (important hedgerows).

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997.

Trees subject to tree preservation orders

38.—(1) Subject to **requirement 28** (ecological and landscape management plan), **requirement 29** (ecological and landscape management plan for the South Downs National Park), **requirement 37** (European protected species onshore) and **requirement 38** (European protected species within the South Downs National Park), the undertaker may fell or lop any tree described in **Schedule 11** (trees subject to tree preservation orders) and identified on the tree preservation order plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Procedure in relation to further approvals, etc.

39.—(1) In this article—

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

(2) 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 measures of success for discharge of requirements 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.

(3) If, within 56 days after the application has been submitted to the authority or owner (or such extended period as shall be agreed with the undertaker in the event that the authority shall request further information) in accordance with this article, it has not intimated its disapproval and the grounds of disapproval, the authority or owner shall be deemed to have approved the content of the application. An exception to this provision shall be made in the case of any application that is considered by the competent authority as requiring an appropriate assessment under the UK Habitats Regulations

(4) In the event of any refusal or disapproval by the authority or owner, the undertaker may resubmit a revised application, or revised plans in support of the original application, and, in that event, if the authority or owner has not intimated its refusal or disapproval and the grounds of refusal or disapproval within 56 days of the revised application or of revised plans being submitted, it shall be deemed to have given its consent or agreement to, or its approval of, the revised application or plans. An exception to this provision shall be made in the case of any application that is considered by the competent authority as requiring an appropriate assessment under the UK Habitats Regulations

(5) The undertaker shall not carry out the proposal until such application or plans have been approved (or deemed to have been approved) or settled by arbitration.

(6) The relevant planning authority shall be entitled to make a reasonable charge for any application for consent, agreement or approval pursuant to paragraph (2).

Certification of plans etc.

40.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the works plan—
 - document reference 2.5 dated 14 February 2013
 - document reference 2.5.1/v3 dated 19 December 2013
 - document reference 2.5.2 sheets 1-11 dated 11 December 2012
 - document reference 2.5.2 sheet 12 dated 14 February 2013
- (b) the land plan—
 - document reference 2.2 dated 14 February 2013
 - document reference 2.2.1 dated 12 December 2012
 - document reference 2.2.2 sheets 1-12 dated 19 February 2013
- (c) the public rights of way temporary closure plan—
 - document reference 2.9 dated 14 February 2013
 - document reference 2.9 sheets 1-5 and 7-11 dated 10 December 2012
 - document reference 2.9 sheet 6 dated 3 June 2013
 - document reference 2.9 sheet 12 dated 14 February 2013
- (d) the footpath stopping up and diversion plan (document reference 2.8 dated 14 February 2013);
- (e) the open access land plan—
 - document reference 2.16 dated 14 February 2013
 - document reference 2.16 sheets 1-3 dated 11 December 2012

- (f) the important hedgerows plan—
 - document reference 2.12 dated 14 February 2013
 - document reference 2.12/v2 sheets 1-7 and 10-12 dated 9 August 2013
 - document reference 2.12/v2 sheets 8-9 dated 6 December 2013
 - (g) the tree protection order plan (document reference 2.17 dated 10 December 2012);
 - (h) the access to works plan—
 - document reference 2.7 dated 14 February 2013
 - document reference 2.7 sheets 1-11 dated 11 December 2012
 - document reference 2.7 sheet 12 dated 14 February 2013
 - (i) the piling restriction plan (Rev 02 dated 19 December 2013);
 - (j) the book of reference (January 2014 – Version 4);
 - (k) the environmental statement (document reference 6.1-6.4);
 - (l) the outline onshore written scheme of archaeological investigation (December 2013 – Version 2);
 - (m) the outline offshore written scheme(s) of archaeological investigation (November 2013 – Version 1);
 - (n) the outline construction traffic management plan (January 2014 – Version 2);
 - (o) the outline ecological and landscape management plan (November 2013 – Version 2);
 - (p) the onshore substation design and access statement (November 2013 – Version 2);
 - (q) the public rights of way strategy (document reference 8.3 dated March 2013);
 - (r) the outline construction and environmental management plan (October 2013 – Version 1);
 - (s) the outline construction noise management plan (October 2013 – Version 1);
 - (t) the outline diver mitigation plan (October 2013 – Version 1);
 - (u) the outline arboricultural method statement (November 2013 – Version 2);
 - (v) the outline hedgerows management plan (November 2013 – Version 2);
 - (w) the outline scour protection management and cable armouring plan (3 December 2013 – Version 2);
 - (x) the outline Tottington Mount management plan (November 2013 – Version 1);
 - (y) the outline cable specification and installation plan (26 November 2013 – Version 2);
 - (z) the outline fisheries liaison strategy (January 2014 – Version 1);
 - (aa) measures of success for discharge of requirements (January 2014 – Version 1),
- for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be 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 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 a 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 shall 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

41. Schedule 12 (protective provisions) shall have effect.

Arbitration

42. 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.

Signed by authority of the Secretary of State for Energy and Climate Change

[Address]

[Date] 201[X]

[Name]
Head of [Unit]
Department for Energy and Climate Change

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED PROJECT

PART 1

Authorised Development

1. A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act on the bed of the English Channel approximately 13 km from the Sussex coast, comprising:

Work No. 1

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 700 MW comprising up to 175 wind turbine generators each fixed to the seabed by one of six foundation types (namely, monopile foundation, tripod foundation, jacket foundation, IBGS foundation, gravity base foundation or suction caisson foundation), fitted with rotating blades and situated within the area hatched red on the works plan and further comprising (b) below;
- (b) a network of cables laid underground within the area hatched red on the works plan between the WTGs and Work No. 2, for the transmission of electricity and electronic communications between these different structures and including one or more cable crossings;

and associated development within the meaning of section 115(2) of the 2008 Act comprising:

Work No. 2 – Up to two offshore substations fixed to the seabed by one of three foundation types (namely monopile foundation, gravity base foundation or jacket foundation) and situated within the area hatched red on the works plan;

Work No. 3A – A connection or connections between the offshore substations comprising Work No. 2 and between Work No. 2 and Work No. 3B consisting of up to four cables laid underground along routes within the Order limits seaward of MHWS including one or more cable crossings;

In the county of West Sussex, Worthing Borough

Work No. 3B – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground from mean low water springs east of Worthing under the A259 Brighton Road to Work No. 7;

Work No. 4 – A new temporary vehicular access track running in a southwest – northeast direction on the southern side of the A259 Brighton Road from Work No. 3B to join the A259 Brighton Road at the southern side of the junction between the A259 Brighton Road and Western Road, Worthing together with modifications to the junction of the new vehicular temporary access track and the adopted highway at the A259 Brighton Road;

Work No. 5 – vehicular access from the A259 Brighton Road to Work No. 6;

Work No. 6 – A new temporary construction compound and a temporary access track to Work No. 7;

Work No. 7 – Onshore connection works consisting of up to four circuits and associated telecommunication cables with up to four transition pits located within the Brooklands Pleasure Park, with associated cables, connecting Work No. 3B to Work No. 8 together with new temporary horizontal directional drilling compounds;

Work No. 8 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-westerly direction through the Brooklands Pleasure Park from Work No. 7 to Work No. 9;

Work No. 9 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-westerly direction from Work No. 8 to Work No. 11 together with new temporary horizontal directional drilling compounds;

Work No. 10 – A new temporary vehicular access track running in an east-west direction from Work No. 9 to join St. Pauls Avenue together with modifications to the junction of the new temporary vehicular access track and the highway at St. Pauls Avenue;

In the county of West Sussex, District of Adur

Work No. 11 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-westerly direction from Work No. 9 to Work No. 12 and passing under the Brighton to Worthing South Coast railway line together with new temporary horizontal directional drilling compounds;

Work No. 12 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-westerly direction from Work No. 11 to Work No. 13;

In the county of West Sussex, Worthing Borough

Work No. 13 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-westerly direction from Work No. 12 to Work No. 14 and crossing under Upper Brighton Road together with new temporary horizontal directional drilling compounds;

Work No. 14 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally northerly direction from Work No. 13 to Work No. 15 and crossing under the A27 trunk road together with new temporary horizontal directional drilling compounds;

Work No. 15 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-westerly direction together with a new temporary horizontal directional drilling exit compound and then in a generally north-easterly direction from Work No. 14 to Work No. 16 and crossing under Lambleys Lane;

In the county of West Sussex, District of Adur

Work No. 16 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-easterly direction from Work No. 15 to Work No. 17 and crossing under Titch Hill;

Work No. 17 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally easterly direction from Work No. 16 to Work No. 18 and crossing under Coombes Road;

Work No. 18 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-easterly direction from Work No. 17 to Work No. 19 and passing under the River Adur, the Downs Link and the A283 Steyning Road together with new temporary horizontal directional drilling compounds;

Work No. 19 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-easterly direction from Work No. 18 to Work No. 20 together with a new temporary horizontal directional drilling exit compound;

In the county of West Sussex, District of Horsham

Work No. 20 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-easterly direction from Work No. 19 to Work No. 21 and crossing under Mill Hill, an unnamed road at Beeding Hill and the South Downs Way;

Work No. 21 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally westerly then easterly direction from Work No. 20 to Work No. 22 and crossing under a Bronze Age cross-dyke at Tottington Mount and Edburton Road together with a new temporary construction compound south of Tottington Manor;

Work No. 22 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally northerly direction from Work No. 21 to Work No. 23 and crossing under an unnamed road, Horn Lane and the A281 Brighton Road;

Work No. 23 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally north-easterly direction from Work No. 22 to Work No. 24 and crossing under the B2116 Henfield Road;

In the county of West Sussex, District of Mid Sussex

Work No. 24 – Onshore connection works consisting of up to four circuits and associated telecommunication cables laid underground in a generally northerly direction from Work No. 23 to Work No. 25 crossing under Bob Lane;

Work No. 25 – A new onshore substation to the north-east of the existing National Grid Bolney substation;

Work No. 26 – Temporary widening of an existing vehicular access track from Bob Lane to Work No. 25 together with upgrades to the existing access track and modifications to the junction of the existing access track and the highway at Bob Lane;

Work No. 27 – Landscaping works including planting;

Work No. 28 – A new permanent public footpath;

Work No. 29 – A new temporary construction compound together with new construction access from Work No. 32 to Work No. 25 and permanent access to Work No. 30 and landscaping works including planting;

Work No. 30 – Landscaping works including planting;

Work No. 31 – A grid connection consisting of up to four circuits and associated telecommunication cables laid underground from the new onshore substation within Work No. 25 and continuing towards a connection point at the existing National Grid Bolney substation;

Work No. 32 – A new construction access running in a southeast – northwest direction from Work No. 29 to join Wineham Lane together with modifications to the junction of the new construction access and the highway at Wineham Lane.

and in connection with such Work Nos. 1 to 3A 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 and the deemed marine licences;

and in connection with such Works 3B to 32 and to the extent that they do not otherwise form part of any such work, further associated development shown on the plans referred to in the requirements, or approved pursuant to the requirements, including—

- (a) ramps, means of access and footpaths;
- (b) bunds, embankments, swales, landscaping and boundary treatments;
- (c) habitat creation;
- (d) jointing bays, manholes, marker posts and other works associated with cable laying;
- (e) water supply works, foul drainage provision, surface water management systems and culverting;
- (f) construction lay down areas and compounds and their restoration;
- (g) 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 works assessed by the environmental statement.

2. The grid coordinates for that part of the authorised development which is seaward of MHWS are specified below—

Coordinates for the Order limits seaward of MHWS

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	50° 41' 11.35 N	000° 21' 55.86 W	10	50° 45' 18.57 N	000° 19' 44.38 W
2	50° 42' 24.83 N	000° 13' 45.70 W	11	50° 48' 30.64 N	000° 20' 55.63 W
3	50° 40' 39.19 N	000° 04' 26.23 W	12	50° 48' 46.78 N	000° 20' 10.23 W
4	50° 39' 31.72 N	000° 01' 28.06 W	13	50° 48' 57.17 N	000° 20' 16.32 W
5	50° 38' 34.92 N	000° 09' 02.89 W	14	50° 49' 03.58 N	000° 19' 54.02 W
6	50° 37' 08.17 N	000° 15' 42.14 W	15	50° 48' 55.62 N	000° 19' 44.17 W
7	50° 38' 13.35 N	000° 16' 17.09 W	16	50° 49' 05.77 N	000° 18' 57.10 W
8	50° 37' 03.36 N	000° 20' 36.10 W	17	50° 45' 11.46 N	000° 14' 39.33 W
9	50° 41' 23.11 N	000° 20' 37.74 W	18	50° 41' 42.91 N	000° 10' 03.13 W

PART 2

Ancillary Works

3. Works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places or other means of accommodating vessels in the construction and/or maintenance of the authorised development;
- (b) 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. The authorised development shall commence no later than the expiration of five years beginning with the date this Order comes into force or such longer period as the Secretary of State may hereafter direct in writing.

Detailed offshore design parameters

2.—(1) Subject to paragraph (2), no wind turbine generator forming part of the authorised development shall—

- (a) exceed a height of 210 metres when measured from LAT to the tip of the vertical blade;
- (b) exceed a height of 124 metres when measured from LAT to the height of the centreline of the generator shaft forming part of the hub;
- (c) exceed a rotor diameter of 172 metres;
- (d) be less than 600 metres from the nearest WTG in either direction perpendicular to the approximate prevailing wind direction (crosswind) or be less than 600 metres from the nearest WTG in either direction which is in line with the approximate prevailing wind direction (downwind);
- (e) have a distance of less than 22 metres between the lowest point of the rotating blade of the wind turbine and MHWS.

(2) References to the location of a wind turbine generator are references to the centre point of the tower of that WTG.

(3) The layout of all wind turbine generators and offshore substations within the Order limits shall comprise an overall contiguous arrangement of offshore structures. Within such overall contiguous arrangement there shall be no more than three contiguous groupings each comprising wind turbine generators of a similar size and each such grouping shall be laid out in a regular pattern such that along each row axis within the grouping there is an approximately equal distance between wind turbine generators.

(4) For the purposes of this requirement, “similar size” means a wind turbine with a difference in rotor diameter of less than 15%.

(5) 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 (the “exclusion zone for wind turbine generators and offshore substations”), whose coordinates are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
3	50° 40' 39.19 N	000° 04' 26.23 W
4	50° 39' 31.72 N	000° 01' 28.06 W
5	50° 38' 34.92 N	000° 09' 02.89 W
19	50° 41' 23.11 N	000° 20' 37.74 W

3.—(1) The total number of offshore substations forming part of the authorised development shall not exceed two.

(2) The dimensions of any offshore substation forming part of the authorised development (excluding masts) shall not exceed 45 metres in height when measured from LAT, 45 metres in length and 45 metres in width.

(3) Each offshore substation shall have no more than one supporting foundation.

- 4.—(1) The total length of the cables comprising Work No. 3A shall not exceed 92 kilometres.
- (2) The total length of the cables comprising Work No. 1(b) shall not exceed 230 kilometres.
- (3) The total amount of cable protection for the cables comprising Work No. 3A shall not exceed 0.092km³.
- (4) The total amount of cable protection for the cables comprising Work No. 1(b) shall not exceed 0.23km³.
- (5) No export cables forming part of the authorised development shall be located within the area hatched green on the works plan (the “exclusion zone for export cables”), whose coordinates are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
17	50° 45' 11.46 N	000° 14' 39.33 W
22	50° 47' 40.20 N	000° 17' 22.86 W
23	50° 43' 59.56 N	000° 17' 23.22 W
24	50° 43' 59.47 N	000° 13' 03.88 W

- 5.—(1) Each monopile foundation forming part of the authorised development shall not have a diameter greater than 6.5 metres.
- (2) Each gravity base foundation forming part of the authorised development shall not have—
- a diameter at the level of the seabed which is greater than 34 metres;
 - a base height, where there is a flat base, which is greater than 10 metres above the level of the seabed.
- (3) Each jacket foundation forming part of the authorised development shall not have—
- a width spacing between each leg at the level of the seabed which is greater than 32 metres;
 - a leg diameter which is greater than 2.6 metres;
 - a pile diameter which is more than 2.6 metres;
 - more than one pile per leg;
 - more than four legs.
- (4) Each tripod foundation forming part of the authorised development shall not have—
- a pile diameter which is greater than 2.8 metres;
 - more than one pile per leg;
 - more than three legs;
 - a column diameter which is greater than 4.5 metres.
- (5) Each suction caisson foundation forming part of the authorised development shall not have—
- a diameter at the level of the seabed which is more than 35 metres;
 - a column diameter which is more than 6.5 metres.
- (6) Each IBGS foundation forming part of the authorised development shall not have—
- a width spacing between each leg at the level of the seabed which is greater than 26 metres;
 - a central pile diameter which is greater than 2.8 metres; and
 - a raking pile diameter which is greater than 1.5 metres.

(7) No more than 156 monopile foundations shall be installed as part of the authorised development.

(8) No more than 124 jacket foundations shall be installed as part of the authorised development.

(9) No more than 124 IBGS foundations shall be installed as part of the authorised development.

(10) No more than 165 tripod foundations shall be installed as part of the authorised development.

(11) No more than 80 gravity base foundations shall be installed as part of the authorised development.

(12) No more than 118 suction caisson foundations shall be installed as part of the authorised development.

(13) The total amount of scour protection for the WTGs and offshore substations forming part of the authorised development shall not exceed 831,400 m³.

Base port travel plan

6.—(1) For the purposes of this requirement only—

“local planning authority” and “local highway authority” mean the planning or highway authority or authorities in England or Wales in whose area the relevant port is located;

“selected base port” means a port situated in England or Wales; and

“base port” means the port used by management personnel for construction of the authorised development.

(2) Save for any horizontal directional drilling works, Works Nos. 1, 2 or 3A shall not be commenced until a travel plan for the onshore port-related traffic to and from the selected base port and relating to the authorised development, has been submitted to and approved in writing by the local planning authority in consultation with the local highway authority.

(3) The travel plan must be implemented as approved at all times specified within the travel plan during the construction of the authorised development.

Lighting

7. The undertaker shall exhibit such lights, with such shape, colour and character as are required by Air Navigation Order 2009, or as directed by the CAA.

Offshore decommissioning

8. No authorised development shall commence until a written decommissioning programme in compliance with [any notice served upon the undertaker by the Secretary of State/the notice dated [•] pursuant to section 105(2) of the 2004 Act] has been submitted to the Secretary of State for approval.

Stages of authorised development onshore

9.—(1) The connection works shall not be commenced until a written scheme setting out the stages of the connection works has been submitted to and approved by West Sussex County Council.

(2) The scheme shall be implemented as approved.

Design approval onshore

10.—(1) No part of Work No. 25 shall commence until details of its layout, design, scale and external appearance (which shall accord with the principles of the onshore substation design and

access statement) have been submitted to and approved in writing by West Sussex County Council.

(2) No building comprised in Work No. 25 shall exceed 6 metres in height above existing ground level and nor shall exceed a footprint of 560m².

(3) No external equipment comprised in Work No. 25 shall exceed 10.5 metres in height above existing ground level.

Provision of landscaping

11.—(1) The works comprising Work No. 25 shall not commence until a written landscaping scheme and associated work programme (which accords with the principles set out in figure 26.6 of the environmental statement) has been submitted to and approved in writing by West Sussex County Council.

(2) The landscaping scheme shall include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting, including any trees;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) existing ground levels and proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports;
- (h) details of existing trees and hedgerows to be removed and justification for their removal, including evidence to show that their removal is the only practicable course of action
- (i) details of existing trees and hedgerows to be retained with measures for their protection during the construction period;
- (j) retained historic landscape features and proposals for restoration, where relevant;
- (k) implementation timetables for all landscaping works; and
- (l) proposed finished heights, form and gradient of earthworks.

Implementation and maintenance of landscaping

12.—(1) All landscaping works in relation to Work No. 25 shall be carried out in accordance with the landscaping scheme approved under **requirement 11** (provision of landscaping) and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted as part of an approved landscaping scheme in relation to any land landward of MLWS within the Order limits that, within a period of ten years after planting, is removed, dies or becomes, in the opinion of West Sussex County Council or South Downs National Park Authority within the South Downs National Park, seriously damaged or diseased, shall be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

Highway accesses

13.—(1) No stage of the connection works shall commence until written details of the siting, design, degree of permanence and layout of—

- (a) any new permanent means of access to a highway outside the South Downs National Park to be used by vehicular traffic for that stage; or

- (b) any new temporary means of access to a highway to be used by vehicular traffic for that stage; or
- (c) any alteration to an existing means of access to a highway used by vehicular traffic for that stage,

has been submitted to and approved by West Sussex County Council (or instead the Secretary of State for Transport where such access is directly to or from a trunk road).

- (2) The highway accesses shall be constructed in accordance with the approved details.

Permanent highway accesses in the South Downs National Park

14.—(1) No stage of the connection works within the South Downs National Park shall commence until written details of the siting, design and layout of any new permanent means of access to a highway to be used by vehicular traffic for that stage has, in consultation with the relevant highway authority, been submitted to and approved by South Downs National Park Authority.

- (2) The highway accesses shall be constructed in accordance with the approved details.

Public rights of way

15.—(1) No stage of the connection works shall commence until, for that stage the undertaker has provided to the relevant highway authority for its approval a public rights of way diversion and closure scheme (which accords with the public rights of way strategy submitted with the application) which shall include—

- (a) a programme for the temporary closure and re-opening of the public rights of way specified at **Schedule 4** (public rights of way to be temporarily stopped up), save for the National Trail in the South Downs National Park, comprising—
 - (i) a plan for the sequencing of construction of the connection works;
 - (ii) any alternative routes during the temporary closure, including routes within the working width; and
 - (iii) the re-opening of the public rights of way upon the cessation of that part of the authorised development requiring the temporary closure of those rights of way;
- (b) the specification for the new footpath forming part of Footpath 8T specified in **Schedule 3** (footpath to be permanently stopped up).

(2) The authorised development shall thereafter be carried out in accordance with the approved scheme.

(3) Prior to the commencement of the connection works the undertaker shall provide to the relevant highways authority in consultation with the South Downs National Park Authority a rights of way and access land communication management plan, which shall include—

- (a) proposals for informing the public of the start and duration of the connection works where public rights of way or 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.

National Trail in the South Downs National Park

16.—(1) No stage of the connection works within the South Downs National Park shall commence until the undertaker has provided to the South Downs National Park Authority for its approval a National Trail diversion and closure scheme (which accords with the public rights of way strategy submitted with the application) which shall include a programme for the temporary closure and re-opening of the National Trail, comprising—

- (a) a plan for the sequencing of construction of the connection works;

- (b) any alternative routes during the temporary closure, including routes within the working width; and
- (c) 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.

(2) The authorised development shall thereafter be carried out in accordance with the approved scheme.

Fencing and means of enclosure

17.—(1) Work No. 25 shall not commence operation until written details of all proposed permanent fences, walls or other means of enclosure for that work have been submitted to and approved by West Sussex County Council.

(2) The permanent fencing, walls or other means of enclosure at Work No. 25 shall be installed as approved.

Temporary fencing in the South Downs National Park

18.—(1) No stage of the connection works within the South Downs National Park shall commence until written details of all proposed temporary fencing or other means of enclosure for that stage that will be in situ for longer than six months have been submitted to and approved by South Downs National Park Authority.

(2) The temporary fencing or other means of enclosure shall be installed as approved.

(3) Any temporary fencing or other means of enclosure shall be removed on completion of the relevant stage of the connection works.

Surface and foul water drainage

19.—(1) The works comprising Work No. 25 shall not commence until written details of the surface and (if any) foul water drainage system (including means of pollution control) have, after consultation with the relevant sewerage and drainage authorities and the Environment Agency, been submitted to and approved by West Sussex County Council.

(2) The surface and foul water drainage system for Work No. 25 shall be constructed in accordance with the approved details.

Contaminated land and groundwater

20. If during the construction of the connection works further contamination not previously identified is found to be present at the site then no further work shall be carried out on that part of the site until a risk assessment has been carried out and the results of the risk assessment have been provided to West Sussex County Council.

Landfill site

21.—(1) No relevant stage of the connection works shall commence until—

- (a) a scheme for the site investigation and risk assessment at the former landfill site at Brooklands Pleasure Park, the location of which is identified on figure 22.4 in the environmental statement, is submitted to and approved by West Sussex County Council in consultation with the Environment Agency and Worthing Borough Council; and
- (b) a landfill management plan to address potential risks identified by the approved scheme in (a) above is submitted to and approved by West Sussex County Council in consultation with the Environment Agency and Worthing Borough Council.

(2) The approved landfill management plan shall thereafter be fully implemented and adhered to throughout the period of the construction of the connection works.

Flood risk

22.—(1) No stage of the connection works may commence until there has been submitted to and approved in writing by West Sussex County Council in consultation with the Environment Agency a scheme for mitigation of flood risk during the construction and operation of the authorised development.

(2) The scheme shall contain in particular—

- (a) provision for stockpiles of excavated materials to be located outside the flood plain where possible, or back from the edges of the watercourse to reduce the risk of silt run-off;
- (b) provision for gaps at intervals in the stockpiles to ensure that floodwater movement is not hindered;
- (c) details regarding offsite disposal of surplus excavated materials;
- (d) details regarding storage of fuel or other hazardous substances outside the flood plain; and
- (e) details regarding reinstatement of the flood plain area to minimise the risk of unprotected topsoil being lost by scour.

(3) The plan approved shall thereafter be fully implemented and adhered to throughout the period of the construction and operation of the authorised development.

Archaeology

23.—(1) No stage of the connection works, including any trial trenching, shall commence outside the South Downs National Park until in relation to the relevant stage of the connection works a written scheme of archaeological investigation (which accords with the outline onshore written scheme of archaeological investigation) has been submitted to and approved in writing by West Sussex County Council.

(2) The written scheme of archaeological investigation shall identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme shall be by a suitably qualified person or body approved by West Sussex County Council.

(4) Any archaeological works or watching brief shall be carried out in accordance with the approved scheme.

Archaeology in the South Downs National Park

24.—(1) No stage of the connection works, including any trial trenching, shall commence within the South Downs National Park until in relation to the relevant stage of the connection works a written scheme of archaeological investigation (which accords with the outline onshore written scheme of archaeological investigation) has been submitted to and approved in writing by South Downs National Park Authority.

(2) The written scheme of archaeological investigation shall identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme shall be by a suitably qualified person or body approved by South Downs National Park Authority.

(4) Any archaeological works or watching brief shall be carried out in accordance with the approved scheme.

Scheduled monument at Tottington Mount

25.—(1) No relevant stage of the connection works shall commence until a methodology for those works that affect the Bronze Age cross-dyke scheduled monument at Tottington Mount (the

“scheduled monument”) has been submitted and approved in writing by English Heritage. The methodology shall form part of the written scheme of archaeological investigation provided pursuant to **requirement 24** (archaeology in the South Downs National Park). The relevant stage of the works at the scheduled monument shall be carried out in accordance with the approved methodology.

(2) The methodology referred to in paragraph (1) shall include provisions to ensure that equipment and machinery are not used or operated on the scheduled monument in such conditions or in such manner that is likely to result in damage to the monument or to ground disturbance in the vicinity of the scheduled monument, other than is necessary for the construction and installation of that part of the authorised development that affects the scheduled monument.

(3) The undertaker shall provide at least 4 weeks’ notice (or such shorter period as may be mutually agreed with English Heritage) of the commencement of the works at the scheduled monument.

(4) The undertaker shall provide access to the works at the scheduled monument to facilitate any inspection that English Heritage considers necessary to inspect the works to ensure compliance with the methodology approved under paragraph (1) above.

(5) The undertaker shall ensure that all agents and contractors involved in the construction works at the scheduled monument are informed of the following—

- (a) the land is designated as a scheduled monument under the Ancient Monuments and Archaeological Areas Act 1979 (as amended); and
- (b) the extent of the land designated as a scheduled monument, as set out in the scheduled monument description and map on the National Heritage List for England.

Construction environmental management plan (CEMP)

26.—(1) No stage of the connection works shall commence until a CEMP, drafted in accordance with the principles set out in the outline construction environmental management plan has been submitted to and approved by West Sussex County Council in consultation with the Environment Agency and, in relation to the soil management plan referred to in paragraph (2)(a) below, Natural England.

(2) The CEMP shall contain in particular—

- (a) a soil management plan which shall include measures for the handling, placing, compaction and management of soil;
- (b) a construction air quality management plan which shall include measures to control fugitive emissions from construction activities and the suppression of dirt and dust;
- (c) an invasive species management plan which shall include the control and removal of invasive weed species;
- (d) a site waste management plan to control the storage, use and disposal of materials during construction;
- (e) measures to monitor and minimise vibration during construction of the connection works;
- (f) proposals for environmental management during operation of Work No. 25; and
- (g) a written scheme to deal with contamination of land including groundwater within the Order limits.

(3) All remediation, construction and commissioning works shall be undertaken in accordance with the approved CEMP.

Watercourse crossings

27.—(1) No stage of the connection works involving the crossing, diversion and subsequent reinstatement of any designated main river or ordinary watercourse shall commence until a scheme and programme (including a timescale) for that crossing, diversion and reinstatement has been submitted to and, after consultation with the Environment Agency, approved in writing by

West Sussex County Council. The designated main river or ordinary watercourse shall be crossed, diverted and subsequently reinstated in accordance with the approved scheme and programme.

(2) Unless otherwise permitted under sub-paragraph (1) above, throughout the period of construction of the connection works, all ditches, watercourses, field drainage systems and culverts shall be maintained such that the flow of water is not impaired or the drainage onto and from adjoining land rendered less effective.

Ecological and landscape management plan

28.—(1) No stage of the connection works outside the South Downs National Park shall commence until a written ecological and landscape management plan for the connection works outside the South Downs National Park (which accords with the outline ecological and landscape management plan) reflecting the survey results and ecological mitigation and enhancement measures, and taking into account landscape reinstatement, included in the environmental statement has been submitted to and approved in writing by West Sussex County Council in consultation with Natural England.

(2) The ecological and landscape management plan shall contain in particular—

- (a) a hedgerows management plan, which shall include proposals for replacement of any hedgerows or important hedgerows to be removed pursuant to **article 37(4)** (felling or lopping of trees and removal of hedgerows) and shall accord with the principles set out in the outline hedgerows management plan; and
- (b) an arboricultural method statement which shall include proposals for replacement of any tree to be felled pursuant to **article 37(1)** (felling or lopping of trees and removal of hedgerows) or **article 38(1)** (trees subject to tree preservation orders) and shall accord with the principles set out in the outline arboricultural method statement.

(3) The ecological and landscape management plan shall include an implementation timetable and shall be carried out as approved.

Ecological and landscape management plan for the South Downs National Park

29.—(1) No stage of the connection works within the South Downs National Park shall commence until a written ecological and landscape management plan for the connection works within the South Downs National Park (which accords with the outline ecological and landscape management plan) reflecting the survey results and ecological mitigation and enhancement measures, and taking into account landscape reinstatement, included in the environmental statement has been submitted to and approved in writing by the South Downs National Park Authority in consultation with Natural England.

(2) The ecological and landscape management plan shall contain in particular—

- (a) a hedgerows management plan, which shall include proposals for replacement of any hedgerows or important hedgerows to be removed pursuant to **article 37(4)** (felling or lopping of trees and removal of hedgerows) and shall accord with the principles set out in the outline hedgerows management plan; and
- (b) an arboricultural method statement which shall include proposals for replacement of any tree to be felled pursuant to **article 37(1)** (felling or lopping of trees and removal of hedgerows) or **article 38(1)** (trees subject to tree preservation orders) and shall accord with the principles set out in the outline arboricultural method statement.

(3) The ecological and landscape management plan shall include an implementation timetable and shall be carried out as approved.

Construction health, safety and environmental plan

30.—(1) No stage of the connection works shall commence until a construction health, safety and environmental plan (which may include the CEMP) which sets out the working methods of

contractors and site staff and the standards expected, has been submitted to and approved in writing by West Sussex County Council in relation to the connection works.

(2) The plan shall contain details of—

- (a) reference to relevant health, safety and environmental legislation and compliance;
- (b) project organisation and management;
- (c) method statements and risk assessments;
- (d) construction site management;
- (e) communication and emergency response plan;
- (f) working hours;
- (g) site security;
- (h) welfare facilities;
- (i) local community liaison responsibilities, including communications plan;
- (j) minimum training requirements for site staff;
- (k) temporary fences, walls or other means of enclosure outside the South Downs National Park;
- (l) environmental management; and
- (m) construction laydown areas.

(3) The plan approved in relation to the connection works shall be followed in relation to those works.

Construction traffic management plan

31.—(1) No stage of the connection works shall commence until a construction traffic management plan (which accords with the outline construction traffic and management plan) has been submitted to and approved by West Sussex County Council in consultation with the Secretary of State for Transport.

(2) The construction traffic management plan shall accord with the principles set out in the environmental statement and shall include proposals for—

- (a) construction vehicle routing;
- (b) site accesses;
- (c) the management of junctions to and crossings of the public highway and other public rights of way;
- (d) the scheduling and timing of movements, in particular the details of abnormal load movements;
- (e) temporary warning signs;
- (f) a workforce travel plan; and
- (g) access routes along the highway network to construction compounds and construction laydown areas

(3) The construction traffic management plan shall be implemented as approved.

(4) The access marked AC6 on the access to works plan at Lambley's Lane/A27 trunk road shall not be brought into use as a construction access for the authorised development until the undertaker has demonstrated to the reasonable satisfaction of the Secretary of State for Transport that the access and the junction with the A27 trunk road can be used or altered in a way that maintains the safety and operation of the A27 trunk road.

Construction hours

32.—(1) Construction work for the connection works and any construction-related traffic movements to or from the site of the connection works shall not take place other than between 0700 hours and 1900 hours Monday to Friday and between 0800 hours and 1300 hours on Saturday, with no activity on Sundays, public holidays or bank holidays, save—

- (a) where continuous periods of construction work are required, such as concrete pouring or directional drilling and West Sussex County Council and the South Downs National Park Authority within the South Downs National Park has been notified prior to such works 72 hours in advance;
- (b) for the delivery of abnormal loads to the connection works, which may cause congestion on the local road network and the relevant highway authority has been notified prior to such works 72 hours in advance;
- (c) where works are being carried out on the foreshore;
- (d) as otherwise agreed in writing with West Sussex County Council and the South Downs National Park Authority within the South Downs National Park.

(2) All construction operations which are to be undertaken outside the hours specified in paragraph (1) shall be agreed with West Sussex County Council and the South Downs National Park Authority within the South Downs National Park in writing in advance, and shall be carried out within the agreed times.

External lighting and control of artificial light emissions

33.—(1) No stage of the connection works outside the South Downs National Park where artificial lighting is required shall commence until written details of any external lighting to be installed in connection with that stage, including measures to prevent light spillage has been submitted to and approved by West Sussex County Council; any approved means of lighting shall subsequently be installed as approved.

(2) Work No. 25 shall not be commenced until a written scheme for the management and mitigation of artificial light emissions during the operation of Work No. 25 has been submitted to and approved in writing by West Sussex County Council.

(3) The approved scheme for the management and mitigation of artificial light emissions shall be implemented before and maintained during the operation of Work No. 25.

External lighting in the South Downs National Park

34.—(1) No stage of the connection works within the South Downs National Park where artificial lighting is required shall commence until written details of any external lighting to be installed in connection with that stage, including measures to prevent light spillage, has been submitted to and approved by South Downs National Park Authority; any approved means of lighting shall subsequently be installed as approved.

Control of noise during construction

35.—(1) No stage of the connection works shall commence until a written scheme for noise management during construction of those works (which accords with the outline construction noise management plan) has been submitted to and approved by West Sussex County Council.

(2) The scheme shall set out the particulars of—

- (a) the works, and the method by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits;
- (c) in the case of Work No. 25 and any horizontal directional drilling works, a scheme for monitoring noise to ensure compliance with the noise limits and the effectiveness of the attenuation measures;

- (d) in the case of Work No. 25, restrictions on certain construction activities to within the hours of 0800 and 1800 Monday to Friday and between 0800 hours and 1300 hours on Saturday, with no activity on Sundays, public holidays or bank holidays; and
- (e) provision of notifications regarding exceptional hours of working.

(3) The approved noise management scheme shall be implemented before and maintained during construction of the connection works.

(4) The construction of the connection works shall be undertaken in accordance with the approved noise management scheme.

Control of noise during operational phase

36.—(1) Work No. 25 shall not commence operation until a written scheme for noise management including monitoring and attenuation for the use of Work No. 25 has been submitted to and approved by West Sussex County Council.

(2) The noise management scheme shall be implemented as approved and maintained for the duration of use of the authorised development.

European protected species onshore

37.—(1) No stage of the connection works shall 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 stage of the connection works or in any of the trees to be lopped or felled as part of that stage of the connection works.

(2) Where a European protected species is shown to be present, the relevant part(s) of the connection works outside the South Downs National Park shall not begin until, after consultation with Natural England, a scheme of protection and mitigation measures has been submitted to and approved in writing by West Sussex County Council. The connection works shall be carried out in accordance with the approved scheme.

(3) “European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010(a).

European protected species within the South Downs National Park

38.—(1) Where a European protected species is shown to be present within the South Downs National Park pursuant to **requirement 37** (European protected species onshore), the relevant part(s) of the connection works within the South Downs National Park shall not begin until, after consultation with Natural England, a scheme of protection and mitigation measures has been submitted to and approved in writing by South Downs National Park Authority. The connection works shall be carried out in accordance with the approved scheme.

Restoration of land used temporarily for construction

39.—(1) Any land landward of MLWS within the Order limits and outside the South Downs National Park which is used temporarily for construction of the connection works and not ultimately incorporated in permanent works or approved landscaping, shall be reinstated to its former condition, or such condition as West Sussex County Council may approve, within 12 months of completion of commissioning of the connection works (or prior to this, if reasonably practicable).

(2) For the purposes of this requirement, “completion of commissioning” means the date when the circuits have been fully tested and verified that they are able to transmit their rated power capacity to the grid connection point.

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Restoration of land within the South Downs National Park used temporarily for construction

40.—(1) Any land within the South Downs National Park which is used temporarily for construction of the connection works and not ultimately incorporated in permanent works or approved landscaping, shall be reinstated to its former condition, or such condition as the South Downs National Park Authority may approve, within 12 months of completion of commissioning of the connection works (or prior to this, if reasonably practicable).

(2) For the purposes of this requirement, “completion of commissioning” means the date when the circuits have been fully tested and verified that they are able to transmit their rated power capacity to the grid connection point.

(3) No connection works within South Downs National Park shall commence until a method statement for the restoration of the chalk grasslands following construction of those works (which accords with the outline Tottington Mount management plan) has been submitted to and approved by the South Downs National Park Authority. The restoration works shall be carried out in accordance with the approved scheme.

Onshore decommissioning

41. Upon the cessation of commercial operation of the onshore substation works (described in Schedule 1 to the Order and identified in the Works Plan as Work No. 25), a scheme for the demolition and removal of the relevant works and restoration of the substation site to its previous land use and condition as agricultural land, including a proposed timetable, shall be submitted to Mid Sussex District Council for its approval following consultation with Natural England. Following its approval the scheme shall be carried out in accordance with the approved details and timetable unless otherwise agreed in writing by Mid Sussex District Council.

Requirement for written approval

42. Where under any of the above requirements the approval or agreement of the Secretary of State, the relevant planning authority or another body is required, that approval or agreement shall be given in writing.

Amendments to approved details

43.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority or another approval authority (as specified), the approved details shall be carried out as approved unless an amendment or variation is previously agreed in writing by the relevant planning authority or that other approval authority as specified in the relevant requirement in accordance with paragraph (2) and in consultation with any body specified in the relevant requirement or by **requirement 44** (consultation with local planning authority).

(2) Any amendments to or variations from the approved details shall be in accordance with the principles and assessments set out in the environmental statement.

(3) The approved details shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority or that other approval authority.

Consultation with local planning authority

44.—(1) For the purposes of this requirement, “local planning authority” means the planning authority for the area in which the land to which the relevant provision of this Order applies is situated.

(2) Where an application is made to West Sussex County Council for any consent, agreement or approval under the requirements, details shall be approved by West Sussex County Council in consultation with the local planning authority.

SCHEDULE 2

Article 15

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
In the County of West Sussex, Borough of Worthing	A259 Brighton Road at reference point A - B on the works plan
In the County of West Sussex, Borough of Worthing	Upper Brighton Road at reference point C - D on the works plan
In the County of West Sussex, Borough of Worthing	A27 road at reference point E - F on the works plan
In the County of West Sussex, Borough of Worthing	Lambleys Lane at reference point G - H on the works plan
In the County of West Sussex, District of Adur	Titch Hill at reference point I - J on the works plan
In the County of West Sussex, District of Adur	Coombes Road at reference point K - L on the works plan
In the County of West Sussex, District of Adur	A283 road at reference point M - N on the works plan
In the County of West Sussex, District of Horsham	Mill Hill at reference point O - P on the works plan
In the County of West Sussex, District of Horsham	Unnamed road at Beeding Hill at reference point Q - R on the works plan
In the County of West Sussex, District of Horsham	Edburton Road at reference point S - T on the works plan
In the County of West Sussex, District of Horsham	Unnamed road at reference point U - V on the works plan
In the County of West Sussex, District of Horsham	Horn Lane at reference point W - X on the works plan
In the County of West Sussex, District of Horsham	A281 Brighton Road at reference point Y - Z on the works plan
In the County of West Sussex, District of Horsham	B2116 Henfield Road at reference point AA - BB on the works plan
In the County of West Sussex, District of Mid Sussex	Bob Lane at reference point CC - DD on the works plan

SCHEDULE 3

Article 17

FOOTPATH TO BE PERMANENTLY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Footpath to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New footpath to be substituted</i>
In the County of West Sussex, District of Mid Sussex	Footpath 8T to the north of Bob Lane, Twineham	Approximately 453 metres of footpath 8T shown by vertical zebra stripes between the points marked A and E on the footpath stopping up and diversion plan	Approximately 736 metres of new footpath 8T shown by a black line between the points marked A, B, C, D and E on the footpath stopping up and diversion plan

SCHEDULE 4

Article 17

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public rights of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
In the County of West Sussex, Borough of Worthing	No. 3135, Footpath	Approximately 40 metres of footpath 3135 shown orange between the points marked A and B on the public rights of way temporary closure plan
In the County of West Sussex, Borough of Worthing, South Downs National Park	No. 3134, Footpath	Approximately 44 metres of footpath 3134 shown orange between the points marked C and D on the public rights of way temporary closure plan
In the County of West Sussex, Borough of Worthing, South Downs National Park	No. 3134, Footpath	Approximately 47 metres of footpath 3134 shown orange between the points marked E and F on the public rights of way temporary closure plan
In the County of West Sussex, District of Adur, South Downs	No. 2073, Footpath	Approximately 41 metres of footpath 2073 shown orange between the points marked G and H on the public rights of way temporary closure plan

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public rights of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
National Park		
In the County of West Sussex, District of Adur, South Downs National Park	No. 2075, Bridleway	Approximately 40 metres of bridleway 2075 shown orange between the points marked I and J on the public rights of way temporary closure plan
In the County of West Sussex, District of Adur, South Downs National Park	No. 2061/1, Bridleway	Approximately 56 metres of bridleway 2061/1 shown orange between the points marked M and N on the public rights of way temporary closure plan
In the County of West Sussex, District of Adur, South Downs National Park	No. 2059, Restricted byway	Approximately 42 metres of restricted byway 2059 shown orange between the points marked K and L on the public rights of way temporary closure plan
In the County of West Sussex, District of Adur, South Downs National Park	No. 2061/1, Bridleway	Approximately 48 metres of bridleway 2061/1 shown orange between the points marked O and P on the public rights of way temporary closure plan
In the County of West Sussex, District of Adur, South Downs National Park	No. 2064/1, Footpath	Approximately 41 metres of footpath 2064/1 shown orange between the points marked Q and R on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2761, Public byway	Approximately 65 metres of public byway 2761 shown orange between the points marked S and T on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2758, Bridleway (The Monarch's Way)	Approximately 40 metres of bridleway 2758 shown orange between the points marked U and V on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2760, Restricted byway, National Trail (The South Downs Way)	Approximately 78 metres of restricted byway, National Trail 2760 shown orange between the points marked W and X on the public rights of way temporary closure plan

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public rights of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2754, Bridleway	Approximately 78 metres of bridleway 2754 shown orange between the points marked W and X on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2754, Bridleway	Approximately 47 metres of bridleway 2754 shown orange between the points marked Y and Z on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2754, Bridleway	Approximately 82 metres of bridleway 2754 shown orange between the points marked Aa and Ab on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2754, Bridleway	Approximately 42 metres of bridleway 2754 shown orange between the points marked Ac and Ad on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2745, Footpath	Approximately 48 metres of footpath 2745 shown orange between the points marked Ae and Af on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2741, Footpath	Approximately 43 metres of footpath 2741 shown orange between the points marked Ag and Ah on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham, South Downs National Park	No. 2739, Footpath	Approximately 65 metres of footpath 2739 shown orange between the points marked Ak and Al on the public rights of way temporary closure plan
In the County of West Sussex,	No. 2739, Footpath	Approximately 87 metres of footpath 2739 shown orange between the points marked Ai and Aj on the

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public rights of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
District of Horsham, South Downs National Park		public rights of way temporary closure plan
In the County of West Sussex, District of Horsham	No. 3672, Bridleway	Approximately 58 metres of bridleway 3672 shown orange between the points marked Am and An on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham	No. 3188, Footpath	Approximately 41 metres of footpath 3188 shown orange between the points marked Ao and Ap on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham	No. 3189, Footpath	Approximately 124 metres of footpath 3189 shown orange between the points marked Aq and Ar on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham	No. 3187, Footpath	Approximately 41 metres of footpath 3187 shown orange between the points marked As and At on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham	No. 2540, Footpath	Approximately 41 metres of footpath 2540 shown orange between the points marked Au and Av on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham	No. 2535, Footpath	Approximately 41 metres of footpath 2535 shown orange between the points marked Aw and Ax on the public rights of way temporary closure plan
In the County of West Sussex, District of Horsham	No 2534 ,Footpath	Approximately 40 metres of footpath 2534 shown orange between the points marked Ay and Az on the public rights of way temporary closure plan
In the County of West Sussex, District of Mid Sussex	No. 12T, Footpath	Approximately 48 metres of footpath 12T shown orange between the points marked Ba and Bb on the public rights of way temporary closure plan
In the County of West Sussex, District of Mid Sussex	No. 4T, Bridleway	Approximately 45 metres of bridleway 4T shown orange between the points marked Bc and Bd on the public rights of way temporary closure plan
In the County of West Sussex, District of Mid Sussex	No. 11T, Footpath	Approximately 41 metres of footpath 11T shown orange between the points marked Be and Bf on the public rights of way temporary closure plan
In the County of West Sussex, District of Mid Sussex	No. 14T, Footpath	Approximately 42 metres of footpath 14T shown orange between the points marked Bg and Bh on the public rights of way temporary closure plan
In the County of West Sussex, District of Mid	No. 9T, Footpath	Approximately 17 metres of footpath 9T shown orange between the points marked Bi and Bj on the public rights of way temporary closure plan

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public rights of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Sussex In the County of West Sussex, District of Mid Sussex	No. 1T, Footpath	Approximately 44 metres of footpath 1T shown orange between the points marked Bm and Bn on the public rights of way temporary closure plan

SCHEDULE 5

Article 18

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
In the County of West Sussex, Borough of Worthing	Vehicular access from the A259 Brighton Road to the southwest at the point marked AC1 on the access to works plan
In the County of West Sussex, Borough of Worthing	Vehicular access from the A259 Brighton Road to the north at the point marked AC2 on the access to works plan
In the County of West Sussex, Borough of Worthing	Vehicular access from St Pauls Avenue to the west at the point marked AC3 on the access to works plan
In the County of West Sussex, Borough of Worthing	Vehicular access from Upper Brighton Road to the south at the point marked AC4 on the access to works plan
In the County of West Sussex, Borough of Worthing	Vehicular access from Upper Brighton Road to the north at the point marked AC5 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from Lambley's Lane to the west at the point marked AC6 on the access to works plan
In the County of West Sussex, Borough of Worthing	Vehicular access from Lambley's Lane to the west at the point marked AC7 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from Lambley's Lane to the east at the point marked AC8 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from Titch Hill to the west at the point marked AC9 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from Titch Hill to the east at the point marked AC10 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from Coombes Road to the west at the point marked AC11 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from Coombes Road to the east at the point marked AC12 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from the A283 Steyning Road to the west at the point marked AC13 on the access to works plan
In the County of West Sussex, District of Adur	Vehicular access from the A283 Steyning Road to the east at the point marked AC14 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from Mill Hill to the south at the point marked AC15 on the access to works plan

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>
In the County of West Sussex, District of Horsham	Vehicular access from Mill Hill to the north at the point marked AC16 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from the unnamed road at Beeding Hill to the south at the point marked AC17 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from the unnamed road at Beeding Hill to the north at the point marked AC18 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from Edburton Road to the south at the point marked AC19 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from Edburton Road to the north at the point marked AC20 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from Horn Lane to the south at the point marked AC21 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from Horn Lane to the north at the point marked AC22 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from A281 Brighton Road to the north at the point marked AC23 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from A281 Brighton Road to the north at the point marked AC24 on the access to works plan
In the County of West Sussex, District of Horsham	Vehicular access from B2116 Henfield Road to the south at the point marked AC25 on the access to works plan
In the County of West Sussex, District of Mid Sussex	Vehicular access from B2116 Henfield Road to the north at the point marked AC26 on the access to works plan
In the County of West Sussex, District of Mid Sussex	Vehicular access from Bob Lane to the south at the point marked AC27 on the access to works plan
In the County of West Sussex, District of Mid Sussex	Vehicular access from Bob Lane to the north at the point marked AC28 on the access to works plan
In the County of West Sussex, District of Mid Sussex	Vehicular access from Bob Lane to the north at the point marked AC29 on the access to works plan
In the County of West Sussex, District of Mid Sussex	Vehicular access from Wineham Lane to the east at the point marked AC30 on the access to works plan

SCHEDULE 6

Article 22

TEMPORARY SUSPENSION OF PUBLIC ACCESS TO ACCESS LAND

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Area subject to temporary suspension of public rights</i>
In the County of West Sussex, District of Horsham, South Downs National Park	The area of land shown in purple and marked OAL 1 on the open access land plan
In the County of West Sussex, District of Horsham, South Downs National Park	The area of land shown in purple and marked OAL 2 on the open access land plan
In the County of West Sussex, District of Horsham, South Downs National Park	The area of land shown in purple and marked OAL 3 on the open access land plan

SCHEDULE 7

Article 25

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
1 3 23 37 – 41	<p>The right to enter and remain upon the land for the purposes of construction installation, operation, maintenance and decommissioning of the authorised project and to:</p> <p>(a) lay down, install, adjust, alter, construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the “cables”);</p> <p>(b) enter and be upon 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;</p> <p>(c) retain and use the cables for the purpose of the transmission of electricity;</p> <p>(d) pass and re-pass with or without vehicles, plant and machinery for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;</p>

(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>(e) place and to use plant, machinery, structures and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</p> <p>(f) erect fencing and create secure works compounds;</p> <p>(g) construct, lay down, use and remove temporary access roads including any necessary temporary bridging of water courses and drains;</p> <p>(h) effect access to the highway;</p> <p>(i) install and maintain cable marker posts to identify the location of the cables;</p> <p>(j) fell, lop, cut or coppice trees or remove roots of trees or hedges or shrubs;</p> <p>(k) install, use, inspect, maintain, adjust, alter, renew, repair, test, cleanse, improve or extend drainage and culverts;</p> <p>(m) 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);</p> <p>(n) remove fences within the land during any period during which construction, maintenance, repair or renewal are being carried out (subject to the prior 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);</p> <p>(o) use or resort to directional drilling for the installation of the cables; and</p> <p>(p) carry out environmental or ecological mitigation or enhancement works.</p>
6	<p>The right to enter and remain upon the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to:</p> <p>(a) lay down, install, adjust, alter, construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the “cables”);</p> <p>(b) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which</p>

(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>is ancillary to the purposes of transmitting electricity along the cables;</p> <p>(c) retain and use the cables for the purpose of the transmission of electricity;</p> <p>(d) pass and re-pass with or without vehicles, plant and machinery for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;</p> <p>(e) temporarily place and to use plant, machinery and structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</p> <p>(f) effect access to the highway;</p> <p>(g) install and maintain cable marker posts to identify the location of the cables;</p> <p>(h) install, use, inspect, maintain, adjust, alter, renew, repair, adjust, test, extend replace, improve or cleanse drainage or culverts;</p> <p>(i) install alter, re-lay, maintain, adjust, protect or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers);</p> <p>(j) use or resort to directional drilling for the installation of the cables;</p> <p>(k) maintain, replace, renew and remove underground transition pits for the connection of offshore cable circuits to onshore cable circuits; and</p> <p>(l) carry out environmental or ecological mitigation or enhancement works.</p>
7 – 9	<p>The right to enter and remain upon the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to:</p> <p>(a) lay down, install, adjust, alter, construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the “cables”);</p> <p>(b) enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along</p>

(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>the cables;</p> <p>(c) retain and use the cables for the purpose of the transmission of electricity;</p> <p>(d) pass and re-pass with or without vehicles, plant and machinery for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;</p> <p>(e) temporarily place and to use plant, machinery and structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</p> <p>(f) effect access to the highway;</p> <p>(g) install and maintain cable marker posts to identify the location of the cables;</p> <p>(h) install, use, inspect, maintain, adjust, alter, renew, repair, adjust, test, extend replace, improve or cleanse drainage or culverts;</p> <p>(i) install alter, re-lay, maintain, adjust, protect or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers);</p> <p>(j) use or resort to directional drilling for the installation of the cables; and</p> <p>(k) carry out environmental or ecological mitigation or enhancement works.</p>
<p>11</p> <p>13</p> <p>14</p> <p>21</p> <p>24</p> <p>35</p> <p>42</p>	<p>1. The right to enter and remain upon the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to:</p> <p>(a) lay down, install, adjust, alter construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the “cables”);</p> <p>(b) enter and be upon 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;</p> <p>(c) retain and use the cables for the purpose of the transmission of electricity;</p>

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
	<p>(d) pass and re-pass with or without vehicles plant and machinery for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;</p> <p>(e) place and to use plant, machinery, structures and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</p> <p>(f) erect fencing and create secure works compounds;</p> <p>(g) construct, lay down, use and remove temporary access roads including any necessary temporary bridging of water courses and drains;</p> <p>(h) effect access to the highway;</p> <p>(i) install 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;</p> <p>(j) fell, lop or cut or coppice trees or remove roots of trees or hedges or shrubs;</p> <p>(k) install, use, inspect, maintain, adjust, alter, renew, repair, test or cleanse drainage and to alter, adjust, replace, improve or extend culverts;</p> <p>(l) 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);</p> <p>(m) remove fences within the land during any period during which construction, maintenance, repair or renewal are being carried out (subject to the prior 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);</p> <p>(n) store and stockpile materials (including excavated material) within the Order lands;</p> <p>(o) use or resort to directional drilling for the installation of the cables;</p> <p>(p) lay out temporary paths for public use; and</p> <p>(q) carry out environmental or ecological mitigation or enhancement works.</p> <p>2. A restrictive covenant over the land for the benefit of the remainder of the Order land to:</p> <p>(a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any</p>

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
	<p>buildings or construction erection or works of any kind (including the foundations or footings thereto);</p> <p>(b) prevent anything to be done by way of hard surfacing of the Order 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 relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);</p> <p>(c) prevent anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required for agricultural activities;</p> <p>(d) prevent the planting or growing within the Order land 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 project nor make it materially more difficult or expensive to access the relevant part of the authorised project).</p>
<p>12</p> <p>22</p> <p>36</p>	<p>The right to enter and remain upon the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to:</p> <p>(a) by way of directional drilling to lay down, install, adjust, alter construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the “cables”);</p> <p>(b) enter and be upon 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;</p> <p>(c) retain and use the cables for the purpose of the transmission of electricity;</p> <p>(d) pass and re-pass with or without vehicles plant and machinery for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing</p>

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
	<p>the cables;</p> <p>(e) place and to use plant, machinery, structures and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</p> <p>(f) install 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);</p> <p>(g) fell, lop or cut or coppice trees or remove roots of trees or hedges or shrubs;</p> <p>(h) install, use, inspect, maintain, adjust, alter, renew, repair, test or cleanse drainage and to alter, adjust, replace, improve or extend culverts;</p> <p>(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); and</p> <p>(j) remove fences within the land during any period during which construction, maintenance, repair or renewal are being carried out (subject to the prior 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)</p>
<p>15 - 19</p> <p>25 – 27</p> <p>29 – 32</p> <p>34</p> <p>43 – 45</p> <p>47 – 49</p> <p>51 – 54</p> <p>57, 58</p> <p>60 – 63</p> <p>65 – 67</p> <p>69, 70</p> <p>72 – 80</p> <p>83</p> <p>85 – 87</p> <p>89</p>	<p>1. The right to enter and remain upon the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to:</p> <p>(a) lay down, install, adjust, alter construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the “cables”);</p> <p>(b) enter and be upon 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;</p> <p>(c) retain and use the cables for the purpose of the transmission of electricity;</p> <p>(d) pass and re-pass with or without vehicles plant and machinery for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining,</p>

(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>repairing, renewing, inspecting, removing and replacing the cables;</p> <p>(e) place and to use plant, machinery, structures and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</p> <p>(f) erect fencing and create secure works compounds;</p> <p>(g) construct, lay down, use and remove temporary access roads including any necessary temporary bridging of water courses and drains;</p> <p>(h) effect access to the highway;</p> <p>(i) install 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);</p> <p>(j) fell, lop or cut or coppice trees or remove roots of trees or hedges or shrubs;</p> <p>(k) install, use, inspect, maintain, adjust, alter, renew, repair, adjust, test, extend replace, improve or cleanse drainage or culverts;</p> <p>(l) install alter, re-lay, maintain, adjust, protect or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers);</p> <p>(m) remove fences within the land during any period during which construction, maintenance, repair or renewal are being carried out (subject to the prior 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);</p> <p>(n) store and stockpile materials (including excavated material) within the Order lands;</p> <p>(o) use or resort to directional drilling for the installation of the cables;</p> <p>(p) lay out temporary paths for public use; and</p> <p>(q) carry out environmental or ecological mitigation or enhancement works.</p> <p>2. A restrictive covenant over the land for the benefit of the remainder of the Order land to:</p> <p>(a) prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind</p>

(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>(including the foundations or footings thereto);</p> <p>(b) prevent anything to be done by way of hard surfacing of the Order 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 relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);</p> <p>(c) prevent anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required for agricultural activities;</p> <p>(d) not disturb the soil and subsoil at a depth of or under 0.5 metres below the surface of the Order land;</p> <p>(e) prevent the planting or growing within the Order land 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 project nor make it materially more difficult or expensive to access the relevant part of the authorised project).</p>
<p>20</p> <p>28</p> <p>33</p> <p>46</p> <p>50</p> <p>59</p> <p>64</p> <p>68</p> <p>71</p> <p>81, 82</p> <p>88</p> <p>99 - 101</p>	<p>The right to enter and remain upon the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to:</p> <p>(a) lay down, install, adjust, alter construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the “cables”);</p> <p>(b) enter and be upon 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;</p> <p>(c) retain and use the cables for the purpose of the transmission of electricity;</p> <p>(d) pass and re-pass with or without vehicles plant and machinery for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing</p>

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
	<p>the cables;</p> <p>(e) place and to use plant, machinery, structures and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</p> <p>(f) erect fencing and create secure works compounds;</p> <p>(g) construct, lay down, use and remove temporary access roads including any necessary temporary bridging of water courses and drains;</p> <p>(h) effect access to the highway;</p> <p>(i) install 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);</p> <p>(j) fell, lop or cut or coppice trees or remove roots of trees or hedges or shrubs;</p> <p>(k) install, use, inspect, maintain, adjust, alter, renew, repair, adjust, test, extend replace, improve or cleanse drainage or culverts;</p> <p>(l) install alter, re-lay, maintain, adjust, protect or remove pipes, cables or conduits or apparatus (including the pipes, cables or conduits or apparatus of statutory undertakers);</p> <p>(m) remove fences within the land during any period during which construction, maintenance, repair or renewal are being carried out (subject to the prior 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);</p> <p>(n) store and stockpile materials (including excavated material) within the Order lands;</p> <p>(o) use or resort to directional drilling for the installation of the cables;</p> <p>(p) lay out temporary paths for public use; and</p> <p>(q) carry out environmental or ecological mitigation or enhancement works.</p>
84	<p>The right to enter and remain upon the land for the purposes of construction installation, operation, maintenance and decommissioning of the authorised project and to:</p> <p>(a) lay down, install, adjust, alter, construct, use, maintain, repair, renew, upgrade, inspect, remove and replace underground electricity cables together with such telemetry and fibre optic lines, ducting, jointing bays and other</p>

(1) <i>Number of land shown on land plans</i>	(2) <i>Purpose for which rights may be acquired</i>
	<p>apparatus, protection measures, safety measures and other equipment which is ancillary to the purposes of transmitting electricity along such electricity cables (which collectively shall be referred as the “cables”);</p> <p>(b) retain and use the cables for the purpose of the transmission of electricity;</p> <p>(c) pass and re-pass with or without vehicles, plant and machinery for the purposes of laying down, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, inspecting, removing and replacing the cables;</p> <p>(d) place and to use plant, machinery, structures and temporary structures under the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables;</p> <p>(e) erect fencing;</p> <p>(f) install and maintain cable marker posts to identify the location of the cables;</p> <p>(g) install, use, inspect, maintain, adjust, alter, renew, repair, test, cleanse, improve or extend drainage and culverts;</p> <p>(h) 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);</p> <p>(i) remove fences within the land during any period during which construction, maintenance, repair or renewal are being carried out (subject to the prior 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);</p> <p>(j) use or resort to directional drilling for the installation of the cables; and</p> <p>(k) carry out environmental or ecological mitigation or enhancement works.</p>

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
AND RESTRICTIVE COVENANTS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall 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 prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there shall be substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there shall be substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are 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
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

(a) 1973 c.26

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall 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 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.”

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs, the Rampion Offshore Wind Farm Order 201[●](a) (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

6. 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) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be 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.

7. Section 11 of the 1965 Act (powers of entry) shall be 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 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 shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) shall apply 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.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be 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, subject to compliance with that section as respects compensation.

SCHEDULE 9

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised project</i>
In the County of West Sussex, Borough of Worthing	1 6-9 11 19 - 26	Construction and carrying out of the authorised project; worksites for construction and the carrying out of the authorised project; access for carrying out the authorised project	Work Nos. 3B, 7, 8, 9 13 - 15
In the County of West Sussex, Borough of Worthing	4, 5	Construction compound; access for carrying out the authorised project	Work Nos. 3B, 6
In the County of West Sussex, Borough of Worthing	2, 4, 5, 10	Laying of temporary haul roads and improvements to tracks; access for carrying out the authorised project	Work Nos. 4, 5, 6, 7, 8, 9 and 10
In the County of West Sussex, District of Adur	12 - 18 27 - 44	Construction and carrying out of the authorised project; worksites for	Work Nos. 11, 12, 13, 14, 15, 16, 17, 18 and 19

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised project</i>
		construction and the carrying out of the authorised project; access for carrying out the authorised project	
In the County of West Sussex, District of Horsham, South Downs National Park	45 – 54 57 – 81	Construction and carrying out of the authorised project; worksites for construction and the carrying out of the authorised project; access for carrying out the authorised project	Work Nos. 20, 21, 22, 23
In the County of West Sussex, District of Horsham	55, 56	Construction compound; access for carrying out the authorised project	Work Nos. 21
In the County of West Sussex, District of Mid Sussex	82 – 89	Construction and carrying out of the authorised project; worksites for construction and the carrying out of the authorised project; access for carrying out the authorised project	Work Nos. 24
In the County of West Sussex, District of Mid Sussex	91 96 - 98	Laying of temporary haul roads and improvements to tracks; access for carrying out the authorised project	Work Nos. 25, 26

SCHEDULE 10

Article 37

IMPORTANT HEDGEROWS

<i>(1)</i> <i>Area</i>	<i>(3)</i> <i>Reference of hedgerow</i>
In the County of West Sussex, Borough of Worthing	The important hedgerow marked 3 on the important hedgerows plan
In the County of West Sussex, Borough of	The important hedgerow marked 6 on the

Worthing	important hedgerows plan
In the County of West Sussex, District of Adur	The important hedgerow marked 37 on the important hedgerows plan
In the County of West Sussex, District of Adur	The important hedgerow marked 38 on the important hedgerows plan
In the County of West Sussex, District of Adur	The important hedgerow marked 47 on the important hedgerows plan
In the County of West Sussex, District of Adur	The important hedgerow marked 48 on the important hedgerows plan
In the County of West Sussex, Borough of Worthing	The important hedgerow marked 53 on the important hedgerows plan
In the County of West Sussex, Borough of Worthing	The important hedgerow marked 55 on the important hedgerows plan
In the County of West Sussex, Borough of Worthing	The important hedgerow marked 57 on the important hedgerows plan
In the County of West Sussex, Borough of Worthing	The important hedgerow marked 58 on the important hedgerows plan
In the County of West Sussex, Borough of Worthing	The important hedgerow marked 60 on the important hedgerows plan
In the County of West Sussex, Borough of Worthing, South Downs National Park	The important hedgerow marked 63 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 64 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 68 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 71 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 76 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 81 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 85 on the important hedgerows plan
In the County of West Sussex, District of Adur,	The important hedgerow marked 90 on the

South Downs National Park	important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 91 on the important hedgerows plan
In the County of West Sussex, District of Adur, South Downs National Park	The important hedgerow marked 93 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 117 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 119 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 124 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 129 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 133 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 136 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 142 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 148 on the important hedgerows plan
In the County of West Sussex, District of Horsham, South Downs National Park	The important hedgerow marked 149 on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked 151 on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked 152 on the important hedgerows plan

In the County of West Sussex, District of Horsham	The important hedgerow marked 185 on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked 188 on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked 284 on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked 286 on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked 287 on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked 292 on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked 293 on the important hedgerows plan
In the County of West Sussex, District of Horsham	The important hedgerow marked 297a on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 298 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 304 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 317 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 318 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 316 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 314 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 218 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 220 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 224 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 226 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 252 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 254 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 259 on the important hedgerows plan

In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 260 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 280 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 279 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 270a on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 271 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 278 on the important hedgerows plan
In the County of West Sussex, District of Mid Sussex	The important hedgerow marked 275 on the important hedgerows plan

SCHEDULE 11

Article 38

TREES SUBJECT TO TREE PRESERVATION ORDERS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Type of tree and reference</i>	<i>(3)</i> <i>Work to be carried out</i>
In the County of West Sussex, Borough of Worthing [Borough Council of Worthing Tree Preservation Order No. 1 of 2003]	Individual tree Camperdown Elm (<i>Ulmus glabra</i> , var. 'Camperdown') at the point marked T3 on the tree protection order plan	Felling or lopping or cutting back roots
In the County of West Sussex, Borough of Worthing [Borough Council of Worthing Tree Preservation Order No. 1 of 2003]	Group of 7 trees, consisting of: 2 Lombardy Poplar (<i>Populus nigra</i> , var. 'Italica') 4 Whitebeam (<i>Sorbus aria</i>) and 1 Elm (<i>Ulmus procera</i>) in the area marked G2 on the tree protection order plan	Lopping or cutting back roots
In the County of West Sussex, Borough of Worthing [Borough Council of Worthing Tree Preservation Order No. 1 of 2003]	Woodland, consisting of Ash (<i>Fraxinus excelsior</i>) Aspen (<i>Populus tremula</i>) and Lombardy Poplar (<i>Populus nigra</i> , var. 'Italica') in the area marked W3 on the tree protection order plan	Lopping or cutting back roots

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this schedule shall have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

“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 his powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited 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;

“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 Infrastructure Limited and:

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; 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.

3.

- (a) Where under 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.
- (b) 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 shall:

- (i) 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
- (ii) 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.

- (a) The undertaker shall not exercise the powers conferred by articles 21 (Authority to survey and investigate the land), 23 (Compulsory Acquisition of land), 25 (Compulsory acquisition of rights), 26 (Private rights) 29 (Acquisition of part of certain properties), 28 (Acquisition of subsoil only), 31 (Temporary use of land for carrying out the authorised project), 32 (Temporary use of land for maintaining authorised project) and 33 (Statutory undertakers), 37 (Felling or lopping of trees and removal of hedgerows) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.
- (b) The undertaker shall 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.
- (c) The undertaker shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, 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.
- (d) The undertaker shall not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.
- (e) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.

- (a) The undertaker shall 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 shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.
- (b) The approval of the engineer under sub-paragraph (a) shall 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 his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his 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 his approval or disapproval, he shall be deemed to have approved the plans as submitted.
- (c) 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 (b), 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 shall construct it with all reasonable dispatch 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.
- (d) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his 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 shall be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

6.

- (a) Any specified work and any protective works to be constructed by virtue of paragraph 5(d) shall, when commenced, be constructed—
 - (i) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
 - (ii) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
 - (iii) in such manner as to cause as little damage as is possible to railway property; and
 - (iv) 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.
- (b) 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 shall, notwithstanding any such approval, make good such damage and shall 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.
- (c) Nothing in this Schedule shall impose 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.

7. The undertaker shall—

- (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 he may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.

- (a) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that 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 reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall 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.

- (b) 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 shall assume construction of that part of the specified work and the undertaker shall, notwithstanding any such approval of a specified work under paragraph 5(c), 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.
- (c) The engineer shall, 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.
- (d) 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 shall be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker shall 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(c) or in constructing any protective works under the provisions of paragraph 5(d) 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 him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen 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.

11.

- (a) In this paragraph:

“EMI” means, subject to sub-paragraph (b), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development (including the operation of tramcars using the tramway comprised in the works) 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.

- (b) This paragraph shall apply 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(a) 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).
- (c) Subject to sub-paragraph (e), the undertaker shall in the design and construction of the authorised development take all measures necessary to prevent EMI and shall establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.
 - (d) In order to facilitate the undertaker's compliance with sub-paragraph (c):
 - (i) the undertaker shall 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 shall continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(a)) in order to identify all potential causes of EMI and the measures required to eliminate them;
 - (ii) Network Rail shall 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 (i); and
 - (iii) Network Rail shall allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (i).
 - (e) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail shall not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution shall be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(a) shall have effect subject to the sub-paragraph.
 - (f) If at any time prior to the commencement of regular revenue-earning operations on the authorised tramway comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (c), the testing or commissioning of the authorised development causes EMI then the undertaker shall 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 (e)) to Network Rail's apparatus.
 - (g) In the event of EMI having occurred:
 - (i) the undertaker shall afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
 - (ii) Network Rail shall afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
 - (iii) Network Rail shall 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.
 - (h) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (e) or (f):
 - (i) Network Rail shall allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
 - (ii) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the undertaker in accordance with paragraph 6.
 - (i) To the extent that it would not otherwise do so, the indemnity in paragraph 15(a) shall apply 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 (f) applies.

- (j) 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.
- (k) In relation to any dispute arising under this paragraph the reference in article 42 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

12. 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 shall, 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.

13. The undertaker shall 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 shall have first consulted Network Rail and it shall 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.

14. 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 shall, 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.

15.

- (a) The undertaker shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail:
 - (i) by reason of the construction or maintenance of a specified work or the failure thereof; or
 - (ii) 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;

and the undertaker shall 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 his 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 any liability under the provisions of this sub-paragraph.

- (b) Network Rail shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.
- (c) The sums payable by the undertaker under sub-paragraph (a) shall include a sum equivalent to the relevant costs.
- (d) 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 shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (c) which relates to the relevant costs of that train operator.

(e) The obligation under sub-paragraph (c) 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 (d).

(f) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of 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 subparagraph (a); 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.

16. Network Rail shall, 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 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 Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Schedule there shall 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 Schedule or increasing the sums so payable.

18. 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.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993.

20. The undertaker shall 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 40 (Certification of Plans etc) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall 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.

21. The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 40 (Certification of Plans etc) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

PART 2
**FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION
PLC**

Application

1. For the protection of the persons referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected person concerned, have effect.

Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the protected person to enable the protected person in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by the protected person;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than “A-” if the rating is assigned by Standard & Poor’s Ratings Group or “A3” if the rating is assigned by Moody’s Investors Services Inc. (or an equivalent credit rating from an equivalent organisation in the event that such organisation or ratings are no longer applicable);

“acceptable insurance” means a policy of public liability/ third party liability insurance effected and maintained by the undertaker with insurance cover of not less than £50,000,000 (fifty million pounds) per event for the construction period of the onshore works pursuant to this Order with an internationally recognised insurer of repute operating in the London and worldwide insurance market, such policy shall include (but without limitation):

- (a) the protected person named as an insured party under the policy;
- (b) a cross liabilities clause; and
- (c) a waiver of subrogation in favour of the protected person.

“acceptable security” means either:

- (a) evidence provided to the protected person’s reasonable satisfaction that the undertaker has a tangible net worth of not less than £100,000,000 (one hundred million pounds) (or an equivalent financial measure); or
- (b) a parent company guarantee from the undertaker’s ultimate parent company such company having a tangible net worth of not less than £100,000,000 (one hundred million pounds) (or an equivalent financial measure) in favour of the protected person to cover the undertaker’s liability to the protected person to a cap of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty-five million pounds) in a form satisfactory to the protected person in its reasonable opinion; or
- (c) a bank bond or letter of credit from an acceptable credit provider in favour of the protected person to cover the undertaker’s liability to the protected person for an amount of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty-five million pounds) in a form satisfactory to the protected person in its reasonable opinion;

“commence” has the same meaning as in article 2 but for the purposes of this Schedule 12 any works whatsoever which are near to or may affect apparatus of the protected person shall be included within this definition and for the avoidance of doubt this includes works for the diversion or laying of services;

“functions” includes powers and duties;

“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 the protected person including construct, use, repair, alter, inspect, 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 the works to be executed;

“protected person” means National Grid Electricity Transmission plc.

3. Except for paragraphs 4 (apparatus in stopped up streets), and 9 (retained apparatus: protection), 10 (expenses) and 11 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act (as if this Order did not apply).

Apparatus of Protected Person in stopped up streets

4.—(1) Where any street is stopped up under this Order, any protected person whose apparatus is in the street or accessed via that street shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to the protected person legal easements reasonably satisfactory to the specified protected person in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of **article 16** (temporary stopping up of streets), or otherwise under this Order, a protected person shall 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 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

5.—(1) The undertaker, in the case of the powers conferred by this Order shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected person 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 any protected person or any interruption in the supply of electricity, gas or water, as the case may be, by the protected person is caused, the undertaker shall bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) make compensation to the protected person for any loss sustained by it; and
- (b) indemnify the protected person in relation to all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that protected person, by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose 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 a protected person or its contractors or workmen; and the protected person shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without first consulting the undertaker and giving it an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus or override any easement or other interest of a protected person or acquire any land or other interest of a protected

person or create any new rights over the same otherwise than by agreement of the relevant protected person such agreement not to be unreasonably withheld or delayed (having regard to the protected person's existing and future requirements for such land or interests).

(2) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not interfere with any communications cables or equipment used by the protected person in relation to its apparatus or acquire or interfere with any rights or interests supporting the use, maintenance or renewal of such equipment otherwise than by agreement of the relevant protected person (such agreement not to be unreasonably withheld or delayed).

Removal of apparatus

7.—(1) If, in the exercise of agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus of the protected person is placed, that apparatus shall not be removed under this part of this Schedule and any right of a protected person to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the protected person in question 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 shall give to the protected person in question 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 a protected person reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected person to their satisfaction (taking into account 8(1) below) the necessary facilities and rights for

- (a) the construction of alternative apparatus in other land of 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 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 protected person in question shall, 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 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 the protected person 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 the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the protected person in question and the undertaker (both acting reasonably).

(5) The protected person in question shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person 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

8.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a protected person 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 shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected person in question (both acting reasonably) and shall be no less

favourable on the whole to the protected person in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the protected person.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person under 8(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 the protected person 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 in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: Protection: Electricity Undertakers

9.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise, the undertaker shall submit to the protected person in question a plan.

(2) In relation to any works which will or may be situated on, over, under or within 25 metres measured in any direction of any apparatus, or involve embankment works within 25 metres of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a material statement and describing—

- (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; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker shall not commence the construction or renewal of any works to which sub-paragraph (2) applies until:

- (a) the protected person has given written approval of the plan so submitted;
- (b) the protected person has confirmed in writing that it is satisfied in its reasonable opinion that the undertaker has provided acceptable security and provided evidence that the undertaker shall maintain such acceptable security for the construction period of the onshore works authorised by the Order; and
- (c) the protected person has confirmed in writing that it is satisfied in its reasonable opinion that the undertaker has procured acceptable insurance and provided evidence that it shall maintain such acceptable insurance for the construction period of the onshore works authorised by the Order.

(4) Any approval of the protected person required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person may require such modifications to be made to the plans 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.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or, as relevant, sub paragraph (4), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing

access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(7) Where any protected person requires any protective works to be carried out either by the protected person itself or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected person's satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and the protected person in question shall give 56 days' notice of such works from the date of approval of a plan submitted in line with sub-paragraph (1) or (4) (except in an emergency).

(8) If a protected person in accordance with sub-paragraph (5) or (7) 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 6 to 8 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case shall the execution of any works commence until 56 days have lapsed following submission of any 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.

(10) The undertaker shall 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 shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker shall comply with National Grid's policies for development near overhead lines EN43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

10.—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to a protected person on demand all charges, costs and expenses reasonably incurred by that protected person in, or in connection with, the inspection, removal, relaying or replacing, 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 this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the protected person elects to use compulsory purchase powers to acquire any necessary rights under 7(3) all costs incurred as a result of such action;
- (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 Schedule.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions 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 settled by arbitration in accordance with **article 42** (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 the protected person in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall 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 shall 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 shall 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 a protected person in respect of works by virtue of sub-paragraph (1) shall, 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 protected person 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

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development 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 it) in the course of carrying out such works, including without limitation works carried out by the undertaker or a protected person under this Schedule or 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 those works) or property of a protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and
- (b) indemnify that protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the protected person, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party.

(2) The fact that any act or thing may have been done by a protected person on behalf of the undertaker or in accordance with a plan approved by a protected person or in accordance with any requirement of a protected person or under its supervision shall not (subject to sub-paragraph (3)), excuse the undertaker from liability under the provisions of this sub-paragraph (1).

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of a protected person, its officers, servants, contractors or agents.

Ground subsidence monitoring scheme in respect of protected person's apparatus

12.—(1) No works within 100 metres of any apparatus or alternative apparatus which are capable of interfering with or risking damage to a protected person's apparatus shall commence until a scheme for monitoring ground subsidence ("referred to in this paragraph as the monitoring scheme") has been submitted to and approved by the relevant protected person, such approval not to be unreasonably withheld.

(2) The ground subsidence monitoring scheme described in sub-paragraph (1) shall set out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for the protected person's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub paragraph (1) and (2) must be submitted within 56 days prior to the commencement of any works authorised by this Order or comprised within the authorised development. Any requirements of the protected person will be notified within 28 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") shall be submitted to the protected person for approval, such approval not to be unreasonably withheld; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person save that the protected persons retains the right to carry out any further necessary protective works for the safeguarding of their apparatus and can recover any such costs in line with paragraph (10).

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to Part 3 of Schedule 1 (requirements) the undertaker may submit a revised monitoring scheme or mitigation scheme to the protected person for its approval, such approval not to be unreasonably withheld; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

Enactments and agreements

13. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected person 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

14. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a protected person requires the removal of apparatus under paragraph 7(2) or a protected person makes requirements for the protection or alteration of apparatus under paragraph (9), the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of the protected person's

undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and the protected person shall use best endeavours to co-operate with each other for those purposes.

Access

15. If in consequence of an agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

16. Save for differences or disputes arising under paragraph 7(2),7(4), 8(1) and 9 any difference or dispute arising between the undertaker and a protected person under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with **article 42** (arbitration).

Transfer of Agreements

17. Regardless of any provision in this Order (including **article 7**), the undertaker shall not transfer to another person any or all of the benefit of the provisions of this Order unless such person has first entered into a direct covenant in favour of the protected person on terms acceptable to the protected person (acting reasonably) requiring the transferee to observe and perform the obligations under any agreement entered into by the undertaker with the protected person in relation to or pursuant to the provisions in this Schedule.

PART 3

FOR THE PROTECTION OF SOUTH EASTERN POWER NETWORKS PLC

Application

1. For the protection of the undertakers referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected undertaker concerned, have effect.

Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the protected undertaker to enable the protected undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” in respect of the protected undertaker means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that protected undertaker;

“commence” has the same meaning as in article 2 but for the purposes of this Schedule 12 any works whatsoever which are near to or may affect apparatus of the protected undertaker shall be included within this definition and for the avoidance of doubt this includes works for the diversion or laying of services;

“functions” includes powers and duties;

“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 the protected undertaker including construct, use, repair, alter, inspect, 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 the works to be executed;

“protected undertaker” means South Eastern Power Networks PLC;

“undertaker” has the same meaning as in article 2.

3. Except for paragraphs 4 (apparatus in stopped up streets), and 8 (retained apparatus: protection), this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected undertaker are regulated by the provisions of Part 3 of the 1991 Act (as if this Order did not apply).

Apparatus of Protected Undertakers in stopped up streets

4.—(1) Where any street is stopped up under this Order, any protected undertaker whose apparatus is in the street or accessed via that street shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to the protected undertaker legal easements reasonably satisfactory to the specified protected undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of **article 16** (temporary stopping up of streets), or otherwise under this Order, a protected undertaker shall 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 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 subject always to the undertaking of works by the undertaker authorised by this Order.

Acquisition of land

5. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus or override any easement or other interest of a protected undertaker or acquire any land or other interest of a protected undertaker or create any new rights over the same otherwise than by agreement such agreement not to be unreasonably withheld or delayed.

Removal of apparatus

6.—(1) If, in the exercise of agreement reached in accordance with paragraph 5 above or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part of this Schedule and any right of a protected undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the protected undertaker in question 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 shall give to the protected undertaker in question 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 a protected undertaker reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected undertaker to their satisfaction (taking into account 7(1) below) the necessary facilities and rights for:

(a) the construction of alternative apparatus in other land of 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 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 protected undertaker in question shall, 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 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 the protected undertaker 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 the undertaker under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the protected undertaker in question and the undertaker both acting reasonably.

(5) The protected undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected 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 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 a protected 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 shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected undertaker in question and shall be no less favourable on the whole to the protected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the protected undertaker.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected undertaker under 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 the protected 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 in the matter shall be referred to arbitration and, the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected undertaker 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 commencing the execution of any works authorised by this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise, the undertaker shall submit to the protected undertaker in question a plan.

(2) In relation to any works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the protected undertaker under sub-paragraph (1) shall be detailed including a material statement and describing—

- (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; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker shall not commence the construction or renewal of any works to which sub-paragraph (2) applies until the protected undertaker has given written approval of the plan so submitted.

(4) Any approval of the protected undertaker required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) shall not be unreasonably withheld or delayed;
- (c) shall 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.

(5) In relation to a work to which sub-paragraph (2) applies, the protected undertaker may require such modifications to be made to the plans 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.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (4), as amended from time to time by agreement between the undertaker and the protected undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected undertaker shall be entitled to watch and inspect the execution of those works.

(7) Where any protected undertaker requires any protective works to be carried out either by the protected undertaker itself or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected undertaker's reasonable satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and the protected undertaker in question shall give 56 days' notice of such works from the date of approval of a plan submitted in line with sub-paragraph (1) or (4) (except in an emergency).

(8) If a protected undertaker in accordance with sub-paragraph (5) or (7) 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 6 to 8 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case shall the execution of any works commence until 56 days have lapsed following submission of, any 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; and

(10) The undertaker shall 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 shall give to the protected undertaker in question notice as soon as is reasonably practicable and a plan of those works and shall comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

Expenses

9.—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to a protected undertaker on demand all charges, costs and expenses reasonably incurred by that protected undertaker in, or in connection with, the inspection, removal, relaying or replacing, 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 this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the protected undertaker elects to use compulsory purchase powers to acquire any necessary rights under 6(3) all costs incurred as a result of such action;

- (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 Schedule.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions 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 settled by arbitration in accordance with **article 42** (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 the protected undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall 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 shall 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 shall 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 a protected undertaker in respect of works by virtue of sub-paragraph (1) shall, 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 protected 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.

10.—(1) The undertaker, in the case of the powers conferred by this Order shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected undertaker and subject to sub-paragraphs (2) and (3) of this paragraph 10, if by reason or in consequence of the execution of any works in, on, under or over any land purchased, held, appropriated or used under this Order, 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 a protected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any protected undertaker, the undertaker must bear and pay the cost reasonably incurred by that protected undertaker in making good such damage or restoring the supply, and must

- (a) make reasonable compensation to that protected undertaker for any other expenses, loss, damages, penalty or costs incurred by the protected undertaker; and
- (b) indemnify the protected undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or incurred by, the protected undertaker,

by reason or in consequence of any such damage or interruption; and the fact that any act or thing may have been done by the protected undertaker on behalf the undertaker or in accordance with plans approved by the protected undertaker or in accordance with any requirement of the protected undertaker or under its supervision does not, subject to sub-paragraph (2), excuse the undertaker from any liability under the provisions of this paragraph.

(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 a protected undertaker, its officers, servants, contractors or agents.

(3) A protected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker, which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

11. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected undertaker 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. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a protected undertaker requires the removal of apparatus under paragraph 6(2) or a protected undertaker makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of the protected undertaker's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and the protected undertaker shall co-operate with each other for those purposes.

Access

13. If in consequence of an agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected undertaker 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 6(2), 6(4), 7(1) and 8 any difference or dispute arising between the undertaker and a protected undertaker under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected undertaker, be determined by arbitration in accordance with **article 42** (arbitration).

PART 4

FOR THE PROTECTION OF SOUTHERN WATER SERVICES LIMITED

Application

1. For the protection of the undertakers referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected undertaking concerned, have effect.

Interpretation

2. In this part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the protected undertaker to enable the protected undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) mains, pipes or other apparatus belonging to or maintained by the protected undertaker for the purposes of water supply; and
- (b) any drain or works vested in the protected undertaker under the Water Industry Act 1991^(a); and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given by the protected undertaker under section 102(4) of that Act or an agreement to adopt made by the protected undertaker under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 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;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, across, along, over or upon land; and

“protected undertaker” means Southern Water Services Limited.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of Land

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker shall 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 shall not be removed under this Part of this Schedule and any right of a protected undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the protected undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed

(a) 1991 c. 56.

in that land, it shall give to the protected 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 a protected undertaker reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected 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 protected undertaker in question shall, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use all 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 shall be constructed in such manner and in such line or situation as may be agreed between the protected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with **article 42** (arbitration).

(5) The protected undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with **article 42** (arbitration), and after the grant to the protected 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 of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the protected undertaker 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 protected undertaker, shall be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the protected undertaker.

(7) Nothing in sub-paragraph (6) shall authorise 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 a protected 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 shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected undertaker in question or in default of agreement settled by arbitration in accordance with **article 42** (arbitration).

(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 protected 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 shall make such provision for the payment of compensation by the undertaker to that protected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: Protection

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) 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(2), the undertaker shall submit to the protected undertaker a plan, section and description of the works to be executed.

(2) Those works shall 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 protected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected undertaker shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by a protected undertaker under sub-paragraph (2) shall 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 a protected undertaker in accordance with sub-paragraph (3) 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 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph shall preclude 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 shall apply to and in respect of the new plan, section and description.

(6) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the protected 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 shall comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to a protected undertaker the reasonable expenses incurred by that protected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There shall 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 42** (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 the protected undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(4) An amount which apart from this sub-paragraph would be payable to a protected undertaker in respect of works by virtue of sub-paragraph (1) shall, 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 protected 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.

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(2), 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 a protected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any protected undertaker, the undertaker shall—

- (a) bear and pay the cost reasonably incurred by the protected undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the protected undertaker for any other expenses, loss, damages, penalty or costs incurred by the protected undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose 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 the protected undertaker, its officers, servants, contractors or agents.

(3) The protected undertaker shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

10. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and the protected 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 5

FOR THE PROTECTION OF GAS PIPELINE OWNERS, PIPELINE OWNERS AND SEWERAGE UNDERTAKERS

1. For the protection of the undertakers referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected person concerned, or otherwise provided for in this Order, have effect.

2. In this part of this Schedule—

“acceptable insurance” means a policy of public liability/ third party liability insurance effected and maintained by the undertaker with insurance cover of not less than £15,000,000.00 (fifteen million pounds) per event for the construction period of the onshore works pursuant to this order with an internationally recognised insurer of repute operating in the London and worldwide insurance market, such policy shall include (but without limitation):

- (a) the protected person named as an insured party under the policy;
- (b) a cross liabilities clause; and
- (c) a waiver of subrogation in favour of the protected person.

“alternative apparatus” means alternative apparatus adequate to enable the protected person in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) 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;
- (b) in the case of a person maintaining a private pipeline affected by the undertaker's works, any pipes or other apparatus belonging to or maintained by that person ; and
- (c) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the protected person under 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) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 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;

“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; and

“protected person” means—

- (a) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
- (b) a person maintaining a private pipeline affected by the undertaker's works; and
- (c) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the person to whom it belongs or by whom it is maintained.

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker shall not acquire any apparatus otherwise than by agreement.

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 shall not be removed under this part of this Schedule and any right of a protected person to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the protected person 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 shall give to the protected person 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 shall, subject to sub-paragraph (3), afford to the protected person 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) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the protected person in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(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).

(4) The protected person in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42, and after the grant to the protected person 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.

(5) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the protected person 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 protected person, shall be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the protected person.

(6) Nothing in sub-paragraph (5) shall authorise 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.

6.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a protected person 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 shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected person in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(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 protected person 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 shall make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) 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(2), the undertaker shall:

- (a) submit to the protected person in question a plan, section and description of the works to be executed; and
- (b) confirm in writing that it is satisfied in its reasonable opinion it has procured acceptable insurance and provide evidence that it shall maintain such acceptable insurance for the construction period of the works authorised by the Order that affect the protected person.

(2) Those works shall 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 protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by an protected person under sub-paragraph (2) shall 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 protected person in accordance with sub-paragraph (3) 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 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph shall preclude 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 shall apply to and in respect of the new plan, section and description.

(6) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the protected person 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 shall 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 shall repay to a protected person the reasonable expenses incurred by that protected person in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There shall 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 42 (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 the protected person in question by virtue of sub-paragraph (1) shall 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 shall 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 cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall 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 a protected person in respect of works by virtue of sub-paragraph (1) shall, 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 protected person 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.

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(2), 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 a protected person, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker shall—

- (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 protected person 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, subject to a maximum total liability to the protected person of £15,000,000.00 (fifteen million pounds).

(2) Nothing in sub-paragraph (1) shall impose 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 a protected person, its officers, servants, contractors or agents.

(3) A protected person shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker which, if it withholds such consent, shall 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 shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected person in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

SCHEDULE 13

Article 11

DEEMED LICENCE UNDER MARINE AND COASTAL ACCESS ACT 2009 – ARRAY

PART 1

LICENSED MARINE ACTIVITIES

1.—(1) In this licence—

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“Annex 1 Habitat” means such habitat as defined under the EU Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora;

“array” means Work Nos. 1 and 2, as set out in paragraph 2(2) of this licence;

“authorised deposits” means the substances and articles specified in paragraph 2(4) of this licence;

“authorised scheme” means Work Nos. 1 and 2 described in paragraph 2 of this licence or any part of that work;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science;

“commence” means the first carrying out of any part of the licensed activities, save for pre-construction surveys and monitoring;

“condition” means a condition in Part 2 of this licence;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the decision-maker for the purposes of this Order and submitted with the application on 1 March 2013;

“export cables” means Work No. 3;

“gravity base foundation” means a structure principally of concrete, steel or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or skirts, including associated sea bed preparation, scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side and work platforms and equipment;

“IBGS (Inward Battered Guide Structure) foundation” means a jacket-type concrete, steel or steel and concrete structure which is pre-fabricated with three tubular raking legs, which is installed over a pre-driven central pile, with up to three smaller diameter raking piles driven through the legs to pin the foundation to the seabed, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

“jacket foundation” means a jacket/lattice type structure constructed of concrete, steel or steel and concrete which is fixed to the seabed at three or more points with driven or pre-installed piles or suction cans, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

“JNCC” means the Joint Nature Conservation Committee;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

“LAT” means lowest astronomical tide;

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works and any component part of any wind turbine generator or offshore substation described in Part 1 of Schedule 1 (authorised development) to the extent assessed in the environmental statement; and “maintenance” shall be construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the Marine and Coastal Access Act 2009 which is responsible for the monitoring and enforcement of this licence;

“major storm event” means a greater than 1 in 10 year wave event within the Order limits seaward of MHWS in terms of wave height;

“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, concrete, or steel and concrete large diameter pile, typically cylindrical, driven and/or drilled into the seabed, including associated scour protection, transition piece, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

“notice to mariners” includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen’s harbourmasters, government departments and harbour and pilotage authorities;

“offshore substation” means an offshore platform constructed of steel or concrete or steel and concrete with single or multiple decks housing major electrical equipment including high voltage transformers, switchgear, control rooms, cabling and busbars, lightning protection masts, communications masts, cable management, back-up generators, fuel storage, emergency accommodation, workshops and stores, helihoist facilities, cranes and other associated electrical and ancillary equipment;

“Order limits” means the limits shown on the works plan within which the authorised scheme may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 3 of Part 1 of this licence;

“the Order” means the Rampion Offshore Wind Farm Order 201X;

“outline cable specification and installation plan” means the document certified as the outline cable specification and installation plan for the purposes of this Order;

“outline diver mitigation plan” means the document certified as the outline diver mitigation plan for the purposes of this Order;

“outline fisheries liaison strategy” means the document certified as the outline fisheries liaison strategy for the purposes of this Order;

“outline offshore written scheme of archaeological investigation” means the document certified as the outline offshore written scheme of archaeological investigation by the decision-maker for the purposes of this Order;

“piling restriction plan” means the plan certified as the piling restriction plan by the decision-maker for the purposes of this Order;

“suction can” means a steel cylindrical structure which is fixed to the base of the foundation and partially penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“suction caisson foundation” means a large diameter steel cylindrical structure which partially penetrates the seabed and remains in place using its own weight and a hydrostatic pressure differential, attached to a vertical central column which supports the transition piece, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access platform(s) and equipment;

“Trinity House” means The Corporation of Trinity House of Deptford Strond;

“tripod foundation” means a steel or concrete or steel and concrete jacket/lattice type structure consisting of three main legs linked by cross-braces supporting a single central support for the transition piece which is fixed to the seabed with driven or pre-installed piles or suction cans, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

“undertaker” means E.ON Climate & Renewables UK Rampion Offshore Wind Limited;

“vessel” includes every description of vessel, however propelled or moved, and includes a jack-up barge, floating crane, 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 turbine generator” or “WTG” means a structure comprising a tower, rotor with three horizontal axis blades connected at the hub, nacelle containing mechanical and electrical equipment, ancillary equipment including access ladders and platforms, lifts, cables, corrosion protection systems, maintenance equipment, helihoist facilities and other associated equipment, fixed to a foundation;

“works plan” means the plan certified as the Works plan by the decision-maker for the purposes of the Order.

(2) A reference to any statute, order, regulation or similar instrument shall be 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.

(3) Unless otherwise indicated—

- (a) all times shall be taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates shall be taken to be latitude and longitude degrees and minutes to two decimal places.

(4) 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 shall be—

- (a) Marine Management Organisation
Offshore Licensing Team
Lancaster House
Hampshire Court
Newcastle Business Park

- Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032
Email: marine.consents@marinemanagement.org.uk;
- (b) Marine Management Organisation (Coastal Office)
South Eastern Coastal Office
Shoreham Office
Pilots' Watch House
Basin Road South
Portslade
West Sussex
BN41 1WD
Tel: 01273 419 122
Email: shoreham@marinemanagement.org.uk;
- (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
Navigation Safety Branch
Bay 2/04
Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 023 8032 9191;
- (f) Centre for Environment, Fisheries and Aquaculture Science
Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244
- (g) Natural England
Area 1C, Nobel House
17 Smith Square
London

SW1P 2AL

Tel: 0300 060 4911;

(h) English Heritage

Eastgate Court

195-205 High Street

Guildford

GU1 3EH

Tel: 01483 252 057;

(i) JNCC

Inverdee House

Baxter Street

Aberdeen

AB11 9QA

Tel: 01224 266 550.

Details of licensed marine activities

2.—(1) 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) of the 2009 Act, subject to the conditions—

- (a) the deposit at sea of the substances and articles specified in paragraph (3) below;
- (b) the construction of works in or over the sea and/or on or under the sea bed;
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; and
- (d) the dredging of the seabed and the disposal of 167,995m³ of inert material of natural origin, to include no more than 50,400m³ of chalk, produced during the drilling installation of or seabed preparation for foundations for Work No. 1 and Work No. 2 at disposal site reference WI117 Rampion OWF, whose coordinates are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	50° 41' 11.35 N	000° 21' 55.86 W	6	50° 37' 08.17 N	000° 15' 42.14 W
2	50° 42' 24.83 N	000° 13' 45.70 W	7	50° 38' 13.35 N	000° 16' 17.09 W
19	50° 40' 55.07 N	000° 05' 50.01 W	8	50° 37' 03.36 N	000° 20' 36.10 W
5	50° 38' 34.92 N	000° 09' 02.89 W			

(2) The works referred to in (1)(b) comprise—

Work No. 1

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 700 MW comprising up to 175 wind turbine generators each fixed to the seabed by one of six foundation types (namely, monopile foundation, tripod foundation, jacket foundation, IBGS foundation, gravity base foundation or suction caisson foundation), fitted with rotating blades and situated within the area hatched red on the works plan and further comprising (b) below;
- (b) a network of cables laid underground within the area hatched red on the works plan between the WTGs, and Work No. 2, for the transmission of electricity and electronic

communications between these different structures and including one or more cable crossings;

and associated development within the meaning of section 115(2) of the 2008 Act comprising—

Work No. 2 – Up to two substations fixed to the seabed by one of three foundation types (namely monopile foundation, gravity base foundation or jacket foundation) and situated within the area hatched red on the works plan;

and in connection with such Work Nos. 1 and 2 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 and the provisions of this licence;

and in connection with such Work Nos. 1 and 2, works comprising—

- (a) temporary landing places or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme; and
 - (b) buoys, beacons, fenders and other navigational warning or ship impact protection works.
- (3) The substances or articles authorised for deposit at sea are—
- (a) steel, copper and aluminium;
 - (b) stone and rock;
 - (c) concrete;
 - (d) sand and gravel;
 - (e) plastic and synthetic;
 - (f) material extracted from within the Order limits seaward of MHWS during construction drilling or seabed preparation;
 - (g) marine coatings, other chemicals (where in accordance with condition 9(1)) and timber.

3. The grid coordinates for the authorised scheme are specified below—

Coordinates for the Order limits seaward of MHWS

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	50° 41' 11.35 N	000° 21' 55.86 W	6	50° 37' 08.17 N	000° 15' 42.14 W
2	50° 42' 24.83 N	000° 13' 45.70 W	7	50° 38' 13.35 N	000° 16' 17.09 W
3	50° 40' 39.19 N	000° 04' 26.23 W	8	50° 37' 03.36 N	000° 20' 36.10 W
4	50° 39' 31.72 N	000° 01' 28.06 W	9	50° 41' 23.11 N	000° 20' 37.74 W
5	50° 38' 34.92 N	000° 09' 02.89 W			

4. This licence shall remain in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 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.

5. The provisions of Section 72 of the 2009 Act shall apply to this licence save that the provisions of Section 72(7) relating to the transfer of the licence shall only apply to a transfer not falling within article 7 (benefit of the Order).

PART 2

CONDITIONS

Design parameters

1.—(1) Subject to paragraph (2), no wind turbine generator forming part of the authorised scheme shall—

- (a) exceed a height of 210 metres when measured from LAT to the tip of the vertical blade;
- (b) exceed a height of 124 metres when measured from LAT to the height of the centreline of the generator shaft forming part of the hub;
- (c) exceed a rotor diameter of 172 metres;
- (d) be less than 600 metres from the nearest WTG in either direction perpendicular to the approximate prevailing wind direction (crosswind) or be less than 600 metres from the nearest WTG in either direction which is in line with the approximate prevailing wind direction (downwind);
- (e) have a distance of less than 22 metres between the lowest point of the rotating blade of the wind turbine and MHWS.

(2) References to the location of a wind turbine generator are references to the centre point of the tower of that WTG.

(3) The layout of all wind turbine generators and offshore substations within the Order limits shall comprise an overall contiguous arrangement of offshore structures. Within such overall contiguous arrangement there shall be no more than three contiguous groupings each comprising wind turbine generators of a similar size and each such grouping shall be laid out in a regular pattern such that along each row axis within the grouping there is an approximately equal distance between wind turbine generators.

(4) For the purposes of this condition, “similar size” means a wind turbine with a difference in rotor diameter of less than 15%.

(5) 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 (the “exclusion zone for wind turbine generators and offshore substations”), whose coordinates are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
3	50° 40' 39.19 N	000° 04' 26.23 W
4	50° 39' 31.72 N	000° 01' 28.06 W
5	50° 38' 34.92 N	000° 09' 02.89 W
19	50° 41' 23.11 N	000° 20' 37.74 W

2.—(1) The total number of offshore substations forming part of the authorised scheme shall not exceed two.

(2) The dimensions of any offshore substation forming part of the authorised scheme (excluding masts) shall not exceed 45 metres in height when measured from LAT, 45 metres in length and 45 metres in width.

(3) Each offshore substation shall have no more than one supporting foundation.

3.—(1) The total length of the cables comprising Work No. 1(b) shall not exceed 230 kilometres.

(2) The total amount of cable protection for the cables comprising Work No. 1(b) shall not exceed 0.23km³.

4.—(1) Each monopile foundation forming part of the authorised scheme shall not have a diameter greater than 6.5 metres.

(2) Each gravity base foundation forming part of the authorised scheme shall not have—

- (a) a diameter at the level of the seabed which is greater than 34 metres;
- (b) a base height, where there is a flat base, which is greater than 10 metres above the level of the seabed.

(3) Each jacket foundation forming part of the authorised scheme shall not have—

- (a) a width spacing between each leg at the level of the seabed which is greater than 32 metres;
- (b) a leg diameter which is greater than 2.6 metres;
- (c) a pile diameter which is more than 2.6 metres;
- (d) more than one pile per leg;
- (e) more than four legs.

(4) Each tripod foundation forming part of the authorised scheme shall not have—

- (a) a pile diameter which is greater than 2.8 metres;
- (b) more than one pile per leg;
- (c) more than three legs;
- (d) a column diameter which is greater than 4.5 metres.

(5) Each suction caisson foundation forming part of the authorised scheme shall not have—

- (a) a diameter at the level of the seabed which is more than 35 metres;
- (b) a column diameter which is more than 6.5 metres.

(6) Each IBGS foundation forming part of the authorised scheme shall not have—

- (a) a width spacing between each leg at the level of the seabed which is greater than 26 metres;
- (b) a central pile diameter which is greater than 2.8 metres; and
- (c) a raking pile diameter which is greater than 1.5 metres.

(7) No more than 156 monopile foundations shall be installed as part of the authorised scheme.

(8) No more than 124 jacket foundations shall be installed as part of the authorised scheme.

(9) No more than 124 IBGS foundations shall be installed as part of the authorised scheme.

(10) No more than 165 tripod foundations shall be installed as part of the authorised scheme.

(11) No more than 80 gravity base foundations shall be installed as part of the authorised scheme.

(12) No more than 118 suction caisson foundations shall be installed as part of the authorised scheme.

(13) The total amount of scour protection for the WTGs and offshore substations forming part of the authorised scheme shall not exceed 831,000 m³.

Notifications and inspections

5.—(1) The undertaker shall 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 13; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 13;

- (b) Within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above shall provide a completed confirmation form to the MMO confirming that they have read and will comply with the terms of the conditions of this licence.
- (2) Only those persons and vessels notified to the MMO in accordance with condition 13 are permitted to carry out the licensed activities.
- (3) Copies of this licence shall 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 paragraph (1)(a) shall be available for inspection by an authorised enforcement officer at the locations set out in paragraph (3)(b) above.
- (5) The undertaker shall 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 shall inform the MMO in writing at least five working days prior to the commencement of the licensed activities or any part of them.
- (7) Prior to the commencement of the licensed activities or any part of them the undertaker shall publish in the Kingfisher Fortnightly Bulletin details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part.
- (8) The undertaker shall ensure that a notice to mariners is issued at least 10 working days prior to the commencement of the licensed activities or any part of them advising of the start date of Work Nos. 1 and 2 and the expected vessel routes from the local construction ports to the relevant location.
- (9) The undertaker shall ensure that the notices to mariners are updated and reissued at weekly intervals during construction activities and within 5 days of any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under condition 11(b). Copies of all notices shall be provided to the MMO.
- (10) The undertaker shall notify—
- (a) the Hydrographic Office of both the commencement (within two weeks), progress and completion (within two weeks) of the authorised scheme in order that all necessary amendments to nautical charts are made; and
 - (b) the MMO, MCA and Trinity House within two weeks once the authorised scheme is completed and any required lighting or marking has been established.

Navigational practice, safety and emergency response

6.—(1) No part of the authorised scheme shall commence until the Secretary of State, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations contained within MGN 371 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes including full details of the Emergency Co-operation Plans (ERCoP) for the construction, operation and decommissioning as appropriate to the authorised scheme.

(2) The undertaker will prepare and implement a project-specific Active Safety Management System, taking account of safety and mitigation measures as referred to in the navigation risk assessment in the environmental statement.

Aids to navigation

7.—(1) The undertaker shall at or near the authorised scheme during the whole period of the construction, operation, alteration, replacement or decommissioning of the authorised scheme 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 shall ensure that timely and efficient notices to mariners and other navigational warnings of the position and nature of the authorised scheme seaward of MHWS, are issued during and after the period of construction, alteration, replacement or decommissioning of the authorised scheme, such information to be promulgated to mariners in the shipping and fishing industry as well as to recreational mariners in accordance with conditions 5(8) and (9).

(3) The undertaker shall notify Trinity House, in writing, as soon as reasonably practicable of both the progress and completion of the authorised scheme seaward of MHWS and any aids for navigation established from time to time.

(4) The undertaker shall provide reports on the availability of aids to navigation periodically as requested by Trinity House.

(5) In case of injury to, or destruction or decay of, the authorised scheme or any part thereof the undertaker shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

8.—(1) The undertaker shall colour all structures yellow from at least highest astronomical tide to a height directed by Trinity House, or shall colour the structure as directed by Trinity House from time to time.

(2) Subject to paragraph (1) above, unless the Secretary of State otherwise directs, the undertaker shall ensure that the wind turbine generators shall be painted light grey (colour code RAL 7035).

Chemicals, drilling and debris

9.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme, including any chemical agents placed within any monopile void, shall 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).

(2) The undertaker shall 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 storage, handling, transport and use of fuels, lubricants, chemicals and other substances shall be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) Where foundation drilling works are proposed, in the event that any system other than water-based mud is proposed the MMO's written approval in relation to the proposed disposal of any arisings shall be obtained before the drilling commences, which may also require a marine licence.

(5) The undertaker shall ensure that any debris arising from the construction of the authorised scheme or temporary works placed below MHWS are removed on completion of the authorised scheme.

(6) At least two months prior to the commencement of the licensed activities the undertaker shall submit to the MMO an audit sheet covering all aspects of the construction of the licenced activities or any part of them. The audit sheet shall include details of—

- (a) loading facilities;
- (b) vessels;
- (c) equipment;
- (d) shipment routes;

(e) working schedules; and

(f) all components and materials to be used in the construction of the authorised scheme.

(7) The audit sheet shall be maintained throughout the construction of the authorised scheme (or relevant part) and any changes notified immediately in writing to the MMO which must give written approval prior to any change being implemented.

(8) In the event that the MMO becomes aware that any of the materials on the audit sheet cannot be accounted for it shall require the undertaker to carry out a side scan sonar survey to plot all obstructions across the relevant area(s) within the Order limits seaward of MHWS where construction works and related activities related to those materials have been carried out and, if the initial survey does not locate the missing materials, over such wider area as the MMO may reasonably request. Local fishermen shall be invited to send a representative to be present during the survey. Any new obstructions that the MMO believes to be associated with the authorised scheme shall be removed at the undertaker's expense.

(9) The undertaker shall inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(10) The undertaker shall ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations and drilling mud shall be disposed of within the offshore Order limits (disposal site reference WI117 Rampion OWF). Any other materials shall be screened out before disposal at this site.

(11) The undertaker shall 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.

(12) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker shall report the loss to the MMO's District Marine Office within 48 hours and if the MMO shall reasonably consider such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker shall endeavour to locate the material and recover it.

(13) The undertaker shall undertake the methods agreed under condition 11(g)(iii) following the high resolution swath bathymetric survey referred to in condition 17(2)(f). Should any such obstructions resulting from burial of the export cables be identified which, in the reasonable opinion of the MMO, may be considered to interfere with fishing, the undertaker shall take such steps to remove them as the MMO in its reasonable opinion shall require.

(14) The undertaker shall 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.

(15) The undertaker shall ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team.

Force majeure

10. 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 outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit shall be notified to the MMO. The unauthorised deposits shall be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

11. No part of the works at paragraph 2(2) of Part 1 (licensed marine activities) of this Schedule shall commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

(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 prepared having regard to the need to-

- (i) Limit as far as possible the horizontal degree of view of wind turbine generators from the South Downs National Park and the Sussex Heritage Coast;
- (ii) Increase as far as possible the distance of the wind turbine generators from the South Downs National Park and the Sussex Heritage Coast;
- (iii) Locate the largest turbines, in any hybrid scheme, to the south-western portion of the Order limits; and
- (iv) Provide clear sight lines through the wind turbine layout in order that the regular geometric pattern of the array is apparent in views from the South Downs National Park and Sussex Heritage Coast.

to be agreed in writing with the MMO in consultation with Trinity House and the MCA which shows—

- (v) the proposed layout and location and choice of foundation of all WTGs together with a written statement of how, having regard to other constraints such as ecological effects, safety reasons or engineering and design parameters. the principles in (i) – (iv) have been taken into account.
 - (vi) the height to the tip of the vertical blade; height to the centreline of the generator shaft forming part of the hub; rotor diameter and spacing of all wind turbine generators;
 - (vii) the height, length and width of all offshore substations;
 - (viii) the length and arrangement and location of all cables comprising Work No 1(b);
 - (ix) the dimensions of all monopile foundations;
 - (x) the dimensions of all gravity base foundations;
 - (xi) the dimensions of all jacket foundations;
 - (xii) the dimensions of all tripod foundations;
 - (xiii) the dimensions of all suction caisson foundations;
 - (xiv) the dimensions of all IBGS foundations;
 - (xv) any archaeological exclusion zones identified under condition 11(h)(iv);
 - (xvi) any exclusion zones/micrositing requirements identified in any mitigation scheme pursuant to condition 11(j); and
 - (xvii) in plan form, the indicative programming of particular works as set out in the indicative written construction programme to be provided under condition 11(b)(iv), to ensure conformity with the description of Works No. 1 and compliance with conditions 1-4 above.
- (b) A construction and monitoring programme to include details of—
- (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant, delivery of materials and installation works;
 - (iii) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 11(h), 15, 16 and 17. The pre-construction survey programme and pre-construction survey methodologies shall be submitted to the MMO for written approval by the MMO in consultation with Natural England and JNCC at least four months prior to the commencement of any survey works detailed within; and

- (iv) an indicative written construction programme for all wind turbine generators and cables comprised in the works at paragraph 2(2) of Part 1 (licensed marine activities) of this Schedule (insofar as not shown in (ii) above).
- (c) A construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
- (i) drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation works;
 - (ii) WTG and offshore substations' location and installation, including scour protection;
 - (iii) cable installation;
 - (iv) contractors;
 - (v) vessels and vessels transit corridors;
 - (vi) proposals to reduce the impacts of noise and vibration from construction works;
 - (vii) a protocol for routeing vessels to and from the wind farm to minimise impacts on marine mammals and marine users;
 - (viii) associated works;
 - (ix) areas within the Order limits in which construction activity will take place; and
 - (x) a schedule of planned maintenance (to be updated every three years to reflect any revised maintenance schedules, technologies or techniques).
- (d) A project environmental management and monitoring plan to include details of—
- (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation 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) waste management plan and disposal arrangements;
 - (iv) the appointment and responsibilities of a fisheries liaison officer and an environmental liaison officer; and
 - (v) a fisheries liaison plan (in accordance with the outline fisheries liaison strategy) to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to condition 5 and to address the interaction of the licensed activities with fishing activities during construction and operation.
- (e) A scour protection management and cable armouring plan, in accordance with the outline scour protection management and cable armouring plan, providing details of the need, type, sources, quantity and installation methods for scour protection.
- (f) In the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol to be agreed in writing with the MMO in consultation with Natural England and JNCC and following current best practice as advised by the statutory nature conservation agencies, to include—
- (i) identification of a Marine Mammal Monitoring Zone (MMMZ);
 - (ii) appointment of an appropriate number of suitably qualified marine mammal observer(s);
 - (iii) methods for the detection of marine mammals within the MMMZ whether visually (by the marine mammal observer(s)) or acoustically using Passive Acoustic Monitoring equipment or other means of detection;
 - (iv) a reporting methodology to enable efficient communication between the marine mammal observer(s) and the person responsible for approving commencement of piling;

- (v) an appropriate soft start procedure whereby piling activities do not commence until an agreed time has elapsed and during which marine mammals have not been detected within the MMMZ;
- (vi) where appropriate, methods for the application of acoustic deterrent devices.
- (g) A cable specification and installation plan (in accordance with the outline cable specification and installation plan), to include—
 - (i) technical specification of offshore cables below MHWS, 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 detailed cable burial plan for the Order limits seaward of MHWS, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques; and
 - (iii) appropriate methods such as a trawl or drift net to be deployed along the offshore subsea cables between Work Nos. 1 and 2, following the survey referred to in condition 17(2)(f) to assess any seabed obstructions resulting from burial of the cables.
- (h) A written scheme of archaeological investigation in relation to the Order limits seaward of mean low water in accordance with the outline offshore written scheme of archaeological investigation, industry good practice and after consultation with English Heritage to include—
 - (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
 - (ii) a methodology for any further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
 - (iii) analysis and reporting of survey data, and timetable, which is to be submitted to the MMO within four months of any survey being completed;
 - (iv) delivery of any mitigation including, where necessary, archaeological exclusion zones;
 - (v) monitoring during and post construction, including a conservation programme for finds;
 - (vi) archiving of archaeological material, inclusive of any completed and agreed archaeological reports produced through the written scheme of archaeological investigation which are to be deposited by the undertaker within a public archive in accordance with the OASIS (Online Access to the Index of archaeological investigations) system;
 - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and
 - (viii) provision for a plan showing, in relation to the plan agreed pursuant to condition 11(a), the indicative proposed location of installation vessels for construction of Work No. 1 and Work No. 2.
- (i) A diver mitigation plan, which accords with the outline diver mitigation plan, to include details of—
 - (i) an appropriate soft start procedure;
 - (ii) appointment of a diver liaison officer; and
 - (iii) a diver communication plan, to include notification of the timing and duration of piling activities.
- (j) A mitigation scheme for any Annex 1 features identified by the survey referred to in condition 15(2)(a).

12.—(1) Any archaeological reports produced in accordance with condition 11(h)(iii) are to be agreed with English Heritage.

(2) Each programme, statement, plan, protocol or scheme required to be approved under condition 11 shall be submitted for approval at least four months prior to the intended start of construction, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) The licensed activities shall 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.

Reporting of engaged agents, contractors and vessels

13.—(1) The undertaker shall provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; 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 licensed activities.

(2) Any changes to the supplied details shall be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Equipment and operation of vessels engaged in licensed activities

14.—(1) All vessels employed to perform the licensed activities shall be constructed and equipped to be capable of the proper performance of such activities in accordance with the conditions of this licence and (save in the case of remotely operated vehicles or vessels) shall comply with paragraphs (2) to (7) below.

(2) All motor powered vessels shall be fitted with—

- (a) electronic positioning aid to provide navigational data;
- (b) radar;
- (c) echo sounder; and
- (d) multi-channel VHF.

(3) No radio beacon or radar beacon operating on the marine frequency bands shall be installed or used without the prior written approval of the Secretary of State.

(4) All vessels' names or identification shall be clearly marked on the hull or superstructure.

(5) All vessels shall exhibit signals in accordance with the requirements of the International Regulations for the Prevention of Collisions at Sea.

(6) All communication on VHF working frequencies shall be in English.

(7) No vessel shall engage in the licensed activities until all the equipment specified in paragraph (2) is fully operational.

Pre-construction monitoring and surveys

15.—(1) The undertaker shall, in discharging condition 11(b), submit details for written approval by the MMO in consultation with Natural England and JNCC of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report; and—

- (a) the survey proposals shall specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals shall 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 shall make clear what post-construction comparison is intended and the justification for this being required.

(2) The pre-construction surveys referred to in condition 15(1) shall unless otherwise agreed with the MMO have due regard to, but not be limited to, the need to undertake—

- (a) a survey(s), in combination with data derived from condition 15(2)(c) to determine the location and extent of any benthic Annex 1 Habitat in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works;
- (b) a survey(s) to determine the location, extent and composition of any benthic habitats of the area(s) within the Order limits in which it is proposed to carry out construction works of conservation, ecological and or economic importance;
- (c) a high resolution swath-bathymetric survey(s) to include a 100% coverage and side scan sonar survey of the area(s) within the Order limits in which it is proposed to carry out construction works, including a 500m buffer around the site of each works and inclusive of seabed anomalies or sites of historical or archaeological interest that lie within that 500m buffer;
- (d) a survey(s) to determine the location and extent of the mussel beds in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works; and
- (e) a survey(s) to determine the extent of fish and shellfish populations and spawning activity within the Order limits in which it is proposed to carry out construction works, and any wider areas where appropriate.

(3) The undertaker shall carry out the surveys agreed under paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO in consultation with Natural England and JNCC.

Construction monitoring

16.—(1) Unless otherwise agreed, the undertaker shall, in discharging condition 11(b), submit details for approval by the MMO in consultation with Natural England and JNCC of any proposed surveys or monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals shall specify each survey's objectives. In any event, such monitoring shall, where driven or part-driven pile foundations are proposed to be used, include monitored background noise measurements (during periods when piling is not being undertaken) and measurements of noise generated by the installation of the first four foundations of each discrete foundation type to be installed, unless otherwise agreed in writing with the MMO.

(2) The undertaker shall carry out the surveys approved under 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 in consultation with Natural England and JNCC.

(3) The results of the initial noise measurements shall be provided to the MMO within four weeks of the installation of the last of the four piles. The assessment of this report by the MMO shall determine whether any further noise monitoring is required.

Post construction surveys

17.—(1) The undertaker shall, in discharging condition 11(b), submit details for written approval by the MMO in consultation with Natural England and JNCC of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results at least four months prior to the commencement of any survey works detailed within. The survey proposals shall 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.

(2) The post construction surveys referred to in condition 17(1) shall unless otherwise agreed with the MMO have due regard to but not be limited to the need to undertake—

- (a) one high resolution swath bathymetric survey and side scan sonar survey per annum around a sample of adjacent turbines to a distance of three turbine spacings to assess any changes in seabed topography. For this purpose the undertaker will prior to the first such survey submit a desk based assessment (which takes account of all factors which influence scour) to identify the sample of adjacent turbines with greatest potential for scour. The survey will be used to validate the desk based assessment: further surveys may be required if there are significant differences between the modelled scour and recorded scour;
- (b) a survey(s) to determine the location, extent and composition of any benthic habitats of the area(s) within the Order limits in which construction works were carried out of conservation, ecological and or economic importance to validate predictions made in the environmental statement;
- (c) dependent on the outcome of the survey undertaken in condition 15(2)(a) above, a survey(s) to determine the effects of construction activity on any benthic Annex 1 Habitat in whole or in part inside the area(s) within the Order limits;
- (d) a survey(s) of the extent of fish and shellfish populations and spawning activity within the Order limits in which construction works were carried out, and any wider areas where appropriate, for comparison against the results of the baseline survey carried out under condition 15(2)(e); and
- (e) a sidescan sonar and bathymetry survey(s) at the locations within the Order limits in which construction works were carried out after the first occurrence of a 1 in 10 year wave event within the Order limits seaward of MHWS in terms of wave height measured from the Greenwich Light Vessel Waverider buoy located at 50°23'.100N, 000°00'.00E;
- (f) one high resolution swath bathymetric survey across the area(s) within the Order limits in which construction works were carried out to assess any changes in bedform topography and such further monitoring as may be agreed to ensure scour equilibrium has been reached and that the cables have been buried.

(3) The undertaker shall carry out the surveys agreed under paragraph (1) for 3 years post-construction, which could be non-consecutive years, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with Natural England and JNCC.

Black bream spawning

18.—(1) 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 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.

(2) 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 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.

(3) 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 modelling.

(4) In this condition, “black bream restriction zone” means the area shaded blue on the piling restriction plan whose coordinates are set out below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	50° 41' 11.35 N	000° 21' 55.86 W

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
20	50° 37' 44.16 N	000° 20' 49.20 W
21	50° 42' 21.05 N	000° 14' 11.00 W

Herring spawning

19.—(1) 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 20 November and 15 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.

(2) 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 20 November and 15 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.

(3) 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, reduced spatial restrictions, piling management measures, installation techniques or noise propagation modelling.

Restrictions on monopile foundations

20.—(1) Subject to paragraph (2), pile driving shall not occur for more than one monopile at any one time within the Order limits.

(2) In the case of the proposed simultaneous piling of two or more monopiles within the Order limits, the proposal together with a calculation of projected noise measurements and contours within the scope of the assessment in the environmental statement shall be provided to the MMO and such simultaneous piling shall not take place until the proposal has been approved by the MMO.

Monitoring of shoreline sediment morphology

21.—(1) The undertaker shall carry out monitoring of shoreline sediment morphology during operation of the array and the export cables, unless otherwise agreed with the MMO in consultation with Natural England and JNCC.

(2) This monitoring shall be carried out in conjunction with established regional coastal process monitoring programmes or, in the event that such programmes are discontinued, in accordance with a coastal process monitoring strategy between the shoreline limits of Beachy Head and Selsey Bill to be approved by the MMO in consultation with Natural England and JNCC.

Decommissioning

22. 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.

DEEMED LICENCE UNDER MARINE AND COASTAL ACCESS
ACT 2009 – EXPORT CABLES

PART 1

LICENSED MARINE ACTIVITIES

1.—(1) In this licence—

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“Annex 1 Habitat” means such habitat as defined under the EU Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora;

“array” means Work Nos. 1 and 2;

“authorised deposits” means the substances and articles specified in paragraph 2(4) of this licence;

“authorised scheme” means Work No. 3 described in paragraph 2 of this licence or any part of those works;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science;

“commence” means the first carrying out of any part of the licensed activities, save for pre-construction surveys and monitoring;

“condition” means a condition in Part 2 of this licence;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the decision-maker for the purposes of this Order and submitted with the application on 1 March 2013;

“export cables” means Work No. 3, as set out in paragraph 2(2) of this licence;

“JNCC” means the Joint Nature Conservation Committee;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

“LAT” means lowest astronomical tide;

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works and any component part of any wind turbine generator or offshore substation described in Part 1 of Schedule 1 (authorised development) to the extent assessed in the environmental statement; and “maintenance” shall be construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the Marine and Coastal Access Act 2009 which is responsible for the monitoring and enforcement of this licence;

“major storm event” means a greater than 1 in 10 year wave event within the Order limits seaward of MHWS in terms of wave height;

“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;

“notice to mariners” includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen’s harbourmasters, government departments and harbour and pilotage authorities;

“Order limits” means the limits shown on the works plan within which the authorised scheme may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 3 of Part 1 of this licence;

“the Order” means the Rampion Offshore Wind Farm Order 201X;

“outline cable specification and installation plan” means the document certified as the outline cable specification and installation plan for the purposes of this Order;

“outline diver mitigation plan” means the document certified as the outline diver mitigation plan for the purposes of this Order;

“outline fisheries liaison strategy” means the document certified as the outline fisheries liaison strategy for the purposes of this Order;

“outline offshore written scheme of archaeological investigation” means the document certified as the outline offshore written scheme of archaeological investigation by the decision-maker for the purposes of this Order;

“Trinity House” means The Corporation of Trinity House of Deptford Strond;

“undertaker” means E.ON Climate & Renewables UK Rampion Offshore Wind Limited;

“vessel” includes every description of vessel, however propelled or moved, and includes a jack-up barge, floating crane, 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;

“works plan” means the plan certified as the works plan by the decision-maker for the purposes of the Order.

(2) A reference to any statute, order, regulation or similar instrument shall be 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.

(3) Unless otherwise indicated—

- (a) all times shall be taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates shall be taken to be latitude and longitude degrees and minutes to two decimal places.

(4) 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 shall be—

- (a) Marine Management Organisation
Offshore Licensing Team
Lancaster House
Hampshire Court
Newcastle Business Park
Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032
Email: marine.consents@marinemanagement.org.uk;
- (b) Marine Management Organisation (Coastal Office)
South Eastern Coastal Office
Shoreham Office
Pilots’ Watch House

Basin Road South
Portslade
West Sussex
BN41 1WD
Tel: 01273 419 122
Email: shoreham@marinemanagement.org.uk;

(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

Navigation Safety Branch
Bay 2/04
Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 023 8032 9191;

(f) Centre for Environment, Fisheries and Aquaculture Science

Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244

(g) Natural England

Area 1C, Nobel House
17 Smith Square
London
SW1P 2AL
Tel: 0300 060 4911;

(h) English Heritage

Eastgate Court
195-205 High Street
Guildford
GU1 3EH
Tel: 01483 252 057;

- (i) JNCC
Inverdee House
Baxter Street
Aberdeen
AB11 9QA
Tel: 01224 266 550.

Details of licensed marine activities

2.—(1) 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) of the 2009 Act, subject to the conditions—

- (a) the deposit at sea of the substances and articles specified in paragraph (3) below;
- (b) the construction of works in or over the sea and/or on or under the sea bed;
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation.

(2) The works referred to in (1)(b) comprise—

Work No. 3 – A connection or connections between the offshore substations comprising Work No. 2 and between Work No. 2 and MHWS consisting of cables laid underground along routes within the Order limits seaward of MHWS and including one or more cable crossings;

and in connection with such Work No. 3 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 and the provisions of this licence;

and in connection with such Work No. 3, works comprising—

- (a) temporary landing places or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme; and
- (b) buoys, beacons, fenders and other navigational warning or ship impact protection works.

(3) The substances or articles authorised for deposit at sea are—

- (a) steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the Order limits seaward of MHWS during construction drilling or seabed preparation;
- (g) marine coatings, other chemicals (where in accordance with condition 9(1)) and timber.

3. The grid coordinates for the authorised scheme are specified below—

Coordinates for the Order limits seaward of MHWS

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
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<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	50° 41' 11.35 N	000° 21' 55.86 W	10	50° 45' 18.57 N	000° 19' 44.38 W
2	50° 42' 24.83 N	000° 13' 45.70 W	11	50° 48' 30.64 N	000° 20' 55.63 W
3	50° 40' 39.19 N	000° 04' 26.23 W	12	50° 48' 46.78 N	000° 20' 10.23 W
4	50° 39' 31.72 N	000° 01' 28.06 W	13	50° 48' 57.17 N	000° 20' 16.32 W
5	50° 38' 34.92 N	000° 09' 02.89 W	14	50° 49' 03.58 N	000° 19' 54.02 W
6	50° 37' 08.17 N	000° 15' 42.14 W	15	50° 48' 55.62 N	000° 19' 44.17 W
7	50° 38' 13.35 N	000° 16' 17.09 W	16	50° 49' 05.77 N	000° 18' 57.10 W
8	50° 37' 03.36 N	000° 20' 36.10 W	17	50° 45' 11.46 N	000° 14' 39.33 W
9	50° 41' 23.11 N	000° 20' 37.74 W	18	50° 41' 42.91 N	000° 10' 03.13 W

4. This licence shall remain in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 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.

5. The provisions of Section 72 of the 2009 Act shall apply to this licence save that the provisions of Section 72(7) relating to the transfer of the licence shall only apply to a transfer not falling within **article 7** (benefit of the Order).

PART 2 CONDITIONS

Design parameters

1. [Not used]

2. [Not used]

3.—(1) The total length of the cables comprising Work No.3A shall not exceed 92 kilometres.

(2) The total amount of cable protection for the cables comprising Work No. 3A shall not exceed 0.092km³.

(3) No export cables forming part of the authorised development shall be located within the area hatched green on the works plan (the “exclusion zone for export cables”), whose coordinates are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
17	50° 45' 11.46 N	000° 14' 39.33 W
22	50° 47' 40.20 N	000° 17' 22.86 W
23	50° 43' 59.56 N	000° 17' 23.22 W
24	50° 43' 59.47 N	000° 13' 03.88 W

4. [Not used]

Notifications and inspections

5.—(1) The undertaker shall 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 13; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 13;
- (b) Within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above shall provide a completed confirmation form to the MMO confirming that they have read and will comply with the terms of the conditions of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 13 are permitted to carry out the licensed activities.

(3) Copies of this licence shall 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 paragraph (1)(a) shall be available for inspection by an authorised enforcement officer at the locations set out in paragraph (3)(b) above.

(5) The undertaker shall 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 shall inform the MMO in writing at least five working days prior to the commencement of the licensed activities or any part of them.

(7) Prior to the commencement of the licensed activities or any part of them the undertaker shall publish in the Kingfisher Fortnightly Bulletin details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part.

(8) The undertaker shall ensure that a notice to mariners is issued at least 10 working days prior to the commencement of Work No.3 advising of the start date of Work No. 3 and the route of the subsea export cables.

(9) The undertaker shall ensure that the notices to mariners are updated and reissued at weekly intervals during construction activities and within 5 days of any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under condition 11(b). Copies of all notices shall be provided to the MMO.

(10) The undertaker shall notify—

- (a) the Hydrographic Office of both the commencement (within two weeks), progress and completion (within two weeks) of the authorised scheme in order that all necessary amendments to nautical charts are made; and
- (b) the MMO, MCA and Trinity House within two weeks once the authorised scheme is completed and any required lighting or marking has been established.

Navigational practice, safety and emergency response

6.—(1) No part of the authorised scheme shall commence until the Secretary of State, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations contained within MGN 371 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes including full details of the Emergency Co-operation Plans (ERCoP) for the construction, operation and decommissioning as appropriate to the authorised scheme.

(2) The undertaker will prepare and implement a project-specific Active Safety Management System, taking account of safety and mitigation measures as referred to in the navigation risk assessment in the environmental statement.

Aids to navigation

7.—(1) The undertaker shall at or near the authorised scheme during the whole period of the construction, operation, alteration, replacement or decommissioning of the authorised scheme 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 shall ensure that timely and efficient notices to mariners and other navigational warnings of the position and nature of the authorised scheme seaward of MHWS, are issued during and after the period of construction, alteration, replacement or decommissioning of the authorised scheme, such information to be promulgated to mariners in the shipping and fishing industry as well as to recreational mariners in accordance with conditions 5(8) and (9).

(3) The undertaker shall notify Trinity House, in writing, as soon as reasonably practicable of both the progress and completion of the authorised scheme seaward of MHWS and any aids for navigation established from time to time.

(4) The undertaker shall provide reports on the availability of aids to navigation periodically as requested by Trinity House.

(5) In case of injury to, or destruction or decay of, the authorised scheme or any part thereof the undertaker shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

8. [Not used]

Chemicals, drilling and debris

9.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme shall 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).

(2) The undertaker shall 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 storage, handling, transport and use of fuels, lubricants, chemicals and other substances shall be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) [Not used]

(5) The undertaker shall ensure that any debris arising from the construction of the authorised scheme or temporary works placed below MHWS are removed on completion of the authorised scheme.

(6) At least two months prior to the commencement of the licensed activities the undertaker shall submit to the MMO an audit sheet covering all aspects of the construction of the licenced activities or any part of them. The audit sheet shall include details of—

- (a) loading facilities;
- (b) vessels;
- (c) equipment;
- (d) shipment routes;
- (e) working schedules; and
- (f) all components and materials to be used in the construction of the authorised scheme.

(7) The audit sheet shall be maintained throughout the construction of the authorised scheme (or relevant part) and any changes notified immediately in writing to the MMO which must give written approval prior to any change being implemented.

(8) In the event that the MMO becomes aware that any of the materials on the audit sheet cannot be accounted for it shall require the undertaker to carry out a side scan sonar survey to plot all obstructions across the relevant area(s) within the Order limits seaward of MHWS where construction works and related activities related to those materials have been carried out and, if the initial survey does not locate the missing materials, over such wider area as the MMO may reasonably request. Local fishermen shall be invited to send a representative to be present during the survey. Any new obstructions that the MMO believes to be associated with the authorised scheme shall be removed at the undertaker's expense.

(9) [Not used]

(10) [Not used]

(11) The undertaker shall 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.

(12) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker shall report the loss to the MMO's District Marine Office within 48 hours and if the MMO shall reasonably consider such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker shall endeavour to locate the material and recover it.

(13) The undertaker shall undertake the methods agreed under condition 11(g)(iii) following the high resolution swath bathymetric survey referred to in condition 17(2)(f). Should any such obstructions resulting from burial of the export cables be identified which, in the reasonable opinion of the MMO, may be considered to interfere with fishing, the undertaker shall take such steps to remove them as the MMO in its reasonable opinion shall require.

(14) The undertaker shall ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team.

Force majeure

10. 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 outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit shall be notified to the MMO. The unauthorised deposits shall be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

11. No part of the works at paragraph 2(2) of Part 1 (licensed marine activities) of this Schedule shall commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

- (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, to be agreed in writing with the MMO in consultation with Trinity House and the MCA which shows—
 - (i) the length and arrangement and location of all cables comprising Work No. 3;

- (ii) any archaeological exclusion zones identified under condition 11(h)(iv);
 - (iii) any exclusion zones/micrositing requirements identified in any mitigation scheme pursuant to condition 11(j); and
 - (iv) in plan form, the indicative programming of particular works as set out in the indicative written construction programme to be provided under condition 11(b)(iv), to ensure conformity with the description of Work No. 3 and compliance with condition 3 above.
- (b) A construction and monitoring programme to include details of—
- (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant, delivery of materials and installation works;
 - (iii) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 11(h), 15, 16 and 17. The pre-construction survey programme and pre-construction survey methodologies shall be submitted to the MMO for written approval by the MMO in consultation with Natural England and JNCC at least four months prior to the commencement of any survey works detailed within; and
 - (iv) an indicative written construction programme for all cables comprised in the works at paragraph 2(2) of Part 1 (licensed marine activities) of this Schedule (insofar as not shown in (ii) above).
- (c) A construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
- (i) cable installation, including cable landfall;
 - (ii) contractors;
 - (iii) vessels and vessels transit corridors;
 - (iv) proposals to reduce the impacts of noise and vibration from construction works;
 - (v) a protocol for routeing vessels to and from the wind farm to minimise impacts on marine mammals and marine users;
 - (vi) associated works;
 - (vii) areas within the Order limits in which construction activity will take place; and
 - (viii) a schedule of planned maintenance (to be updated every three years to reflect any revised maintenance schedules, technologies or techniques).
- (d) A project environmental management and monitoring plan to include details of—
- (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation 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) waste management plan and disposal arrangements;
 - (iv) the appointment and responsibilities of a fisheries liaison officer and an environmental liaison officer; and
 - (v) a fisheries liaison plan (in accordance with the outline fisheries liaison strategy) to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to condition 5 and to address the interaction of the licensed activities with fishing activities during construction and operation.
- (e) A scour protection management and cable armouring plan, in accordance with the outline scour protection management and cable armouring plan, providing details of the need, type, sources, quantity and installation methods for scour protection.

- (f) [Not used]
- (g) A cable specification and installation plan (in accordance with the outline cable specification and installation plan), to include—
 - (i) technical specification of offshore cables below MHWS, 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 detailed cable burial plan for the Order limits seaward of MHWS, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques;
 - (iii) appropriate methods such as a trawl or drift net to be deployed along the offshore subsea export cables between the array and mean low water mark, following the survey referred to in condition 17(2)(a) to assess any seabed obstructions resulting from burial of the export cables; and
 - (iv) proposals to minimise impacts on cuttlefish spawning.
- (h) A written scheme of archaeological investigation in relation to the Order limits seaward of mean low water in accordance with the outline offshore written scheme of archaeological investigation, industry good practice and after consultation with English Heritage (and, if relevant West Sussex County Council) to include—
 - (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
 - (ii) a methodology for any further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
 - (iii) analysis and reporting of survey data, and timetable, which is to be submitted to the MMO within four months of any survey being completed;
 - (iv) delivery of any mitigation including, where necessary, archaeological exclusion zones;
 - (v) monitoring during and post construction, including a conservation programme for finds;
 - (vi) archiving of archaeological material, inclusive of any completed and agreed archaeological reports produced through the written scheme of archaeological investigation which are to be deposited by the undertaker within a public archive in accordance with the OASIS (Online Access to the Index of archaeological investigationS⁷) system;
 - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and
 - (viii) provision for a plan showing, in relation to the plan agreed pursuant to condition 11(a), the indicative proposed location of installation vessels for construction of Work No. 3.
- (i) [Not used]
- (j) A mitigation scheme for any Annex 1 features identified by the survey referred to in condition 12(2)(a).

12.—(1) Any archaeological reports produced in accordance with condition 11(h)(iii) are to be agreed with English Heritage (and, if relevant West Sussex County Council).

(2) Each programme, statement, plan, protocol or scheme required to be approved under condition 11 shall be submitted for approval at least four months prior to the intended start of construction, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) The licensed activities shall 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.

Reporting of engaged agents, contractors and vessels

13.—(1) The undertaker shall provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; 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 licensed activities.

(2) Any changes to the supplied details shall be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Equipment and operation of vessels engaged in licensed activities

14.—(1) All vessels employed to perform the licensed activities shall be constructed and equipped to be capable of the proper performance of such activities in accordance with the conditions of this licence and (save in the case of remotely operated vehicles or vessels) shall comply with paragraphs (2) to (7) below.

(2) All motor powered vessels shall be fitted with—

- (a) electronic positioning aid to provide navigational data;
- (b) radar;
- (c) echo sounder; and
- (d) multi-channel VHF.

(3) No radio beacon or radar beacon operating on the marine frequency bands shall be installed or used without the prior written approval of the Secretary of State.

(4) All vessels' names or identification shall be clearly marked on the hull or superstructure.

(5) All vessels shall exhibit signals in accordance with the requirements of the International Regulations for the Prevention of Collisions at Sea.

(6) All communication on VHF working frequencies shall be in English.

(7) No vessel shall engage in the licensed activities until all the equipment specified in paragraph (2) is fully operational.

Pre-construction monitoring and surveys

15.—(1) The undertaker shall, in discharging condition 11(b), submit details for written approval by the MMO in consultation with Natural England and JNCC of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report; and—

- (a) the survey proposals shall specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals shall 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 shall make clear what post-construction comparison is intended and the justification for this being required.

(2) The pre-construction surveys referred to in condition 15(1) shall unless otherwise agreed with the MMO have due regard to, but not be limited to, the need to undertake—

- (a) a survey(s), in combination with data derived from condition 15(2)(c) to determine the location and extent of any benthic Annex 1 Habitat in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works;
- (b) a survey(s) to determine the location, extent and composition of any benthic habitats of the area(s) within the Order limits in which it is proposed to carry out construction works of conservation, ecological and or economic importance;

- (c) a high resolution swath-bathymetric survey(s) to include a 100% coverage and side scan sonar survey of the area(s) within the Order limits in which it is proposed to carry out construction works, including a 500m buffer around the site of each works and inclusive of seabed anomalies or sites of historical or archaeological interest that lie within that 500m buffer;
- (d) a survey(s) to determine the location and extent of the mussel beds in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works; and
- (e) a survey(s) to determine the extent of fish and shellfish populations and spawning activity within the Order limits in which it is proposed to carry out construction works, and any wider areas where appropriate.

(3) The undertaker shall carry out the surveys agreed under paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO in consultation with Natural England and JNCC.

Construction monitoring

16.—(1) Unless otherwise agreed, the undertaker shall, in discharging condition 11(b), submit details for approval by the MMO in consultation with Natural England and JNCC of any proposed surveys or monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals shall specify each survey's objectives.

(2) The undertaker shall carry out the surveys approved under 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 in consultation with Natural England and JNCC.

Post construction surveys

17.—(1) The undertaker shall, in discharging condition 11(b), submit details for written approval by the MMO in consultation with Natural England and JNCC of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results at least four months prior to the commencement of any survey works detailed within. The survey proposals shall 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.

(2) The post construction surveys referred to in condition 17(1) shall unless otherwise agreed with the MMO have due regard to but not be limited to the need to undertake—

- (a) one high resolution swath bathymetric survey across the area(s) within the Order limits in which construction works were carried out to assess any changes in bedform topography and such further monitoring as may be agreed to ensure scour equilibrium has been reached and that the cables have been buried;
- (b) a survey(s) to determine the location, extent and composition of any benthic habitats of the area(s) within the Order limits in which construction works were carried out of conservation, ecological and or economic importance to validate predictions made in the environmental statement;
- (c) dependent on the outcome of the survey undertaken in condition 15(2)(a) above, a survey(s) to determine the effects of construction activity on any benthic Annex 1 Habitat in whole or in part inside the area(s) within the Order limits;
- (d) a survey(s) of the extent of fish and shellfish populations and spawning activity within the Order limits in which construction works were carried out, and any wider areas where appropriate, for comparison against the results of the baseline survey carried out under condition 15(2)(e); and

(e) a sidescan sonar and bathymetry survey(s) at the locations within the Order limits in which construction works were carried out after the first occurrence of a 1 in 10 year wave event within the Order limits seaward of MHWS in terms of wave height measured from the Greenwich Light Vessel Waverider buoy located at 50°23'.100N, 000°00'.00E.

(3) The undertaker shall carry out the surveys agreed under paragraph (1) for 3 years post-construction, which may be non-consecutive years, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with Natural England and JNCC.

Decommissioning

18. 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.

EXPLANATORY NOTES

(This note is not part of the Order)

This Order grants development consent for, and authorises E.ON Climate & Renewables UK Rampion Offshore Wind Limited to construct, operate and maintain a generating station on the bed of the English Channel approximately 13 km from the Sussex coast, together with all necessary and associated development. For the purposes of the development that it authorises, E.ON Climate & Renewables UK Rampion Offshore Wind Limited is authorised by the Order compulsorily or by agreement to purchase land and rights in land to use land, as well as to override easements and other rights. The Order also provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order imposes requirements in connection with the development for which it grants development consent.

The Order also grants deemed marine licences for the marine licensable activities, being the deposit of substances and articles and the carrying out of works involved in the construction of the generating station and associated development. The deemed 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 40** (certification of plans, etc) of this Order may be inspected free of charge at the offices of Worthing Borough Council at [•], Adur District Council at [•], Horsham District Council at [•] and Mid Sussex District Council at [•].

REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES – UPDATES TO REFERENCES

The Report on the Implications for European Sites (RIES) was issued for consultation by the Examining Authority on 13 December 2013. Paragraphs 1.8-1.12 of the RIES listed the documents used to inform the report and contained document references which were based on the internal referencing applied by the Planning Inspectorate at the time. Since this date, the document references have been updated and finalised, as detailed in the table below. The updated document reference should be used in correlation with the finalised document library (appended to the recommendation report). A dash (-) has been used where there has been no change to the document reference.

Document	Document reference contained in the RIES	Updated document reference
Versions of the no significant effects report		
No Significant Effects Report (NSER) (Revision A. December 2012. Document 5.3)	APP-057	APP-055
Rampion Offshore Wind Farm. NSER Revision B. 15 August 2013. Appendix 25 to the applicant's written response to first questions (Deadline II)	REP-255	REP-259
Rampion Offshore Wind Farm. Habitats Regulations Assessment Matrices. Version 3. 15 October 2013. Appendix 5 to the applicant's written response to second questions (Deadline VII)	REP-380	REP-374
Rampion Offshore Wind Farm. Habitats Regulations Assessment Matrices. Version 4. 29 October 2013. Appendix 1 of the Rule 17 response (Part 1) for further information relating to outstanding Habitats Regulations assessment work and matrices.	REP-402	REP-425
Rampion Offshore Wind Farm. NSER Revision C. Appendix 1 of the Rule 17 response (Part 2) for further information relating to outstanding Habitats Regulations assessment work and matrices. (Deadline VIII (12 November 2013))	REP-480	REP-474
Rampion Offshore Wind Farm. Habitats Regulations Assessment Matrices. Version 5. Appendix 3 of the Rule 17 response (Part 2) for further information relating to outstanding Habitats Regulations assessment work and matrices. (Deadline VIII (12 November 2013))	REP-482	REP-476

Document	Document reference contained in the RIES	Updated document reference
Other application documents		
Rampion Offshore Wind Environmental Statement. Section 6 – Physical Environment. December 2012. Document 6.1.6	APP-065	APP-063
Rampion Offshore Wind Environmental Statement. Section 7 – Benthos and Sediment Quality. December 2012. Document 6.1.7.	APP-066	APP-064
Rampion Offshore Wind Environmental Statement. Section 9 – Nature Conservation. December 2012. Document 6.1.9.	APP-068	APP-066
Rampion Offshore Wind Environmental Statement. Section 11 – Marine Ornithology. December 2012. Document 6.1.11.	APP-070	APP-068
Rampion Offshore Wind Environmental Statement. Section 24 – Terrestrial Ecology. December 2012. Document 6.1.24.	APP-083	APP-081
Relevant Representations		
Natural England (NE). 10 May 2013.	REP-158	REP-152
Royal Society for the Protection of Birds (RSPB). 10 May 2013.	REP-184	REP-181
Written Representations		
E.ON Climate & Renewables UK Rampion Offshore Wind Limited. Clarification of Collision Risk. 15 August 2013.	REP-252	REP-256
NE. 15 August 2013.	REP-297	-
Responses to first questions (Deadline II)		
E.ON Climate & Renewables UK Rampion Offshore Wind Limited. 15 August 2013.	REP-308	REP-254 and REP-256
NE. 15 August 2013.	REP-327	REP-326
RSPB and Sussex Ornithological Society (SOS). 14 August 2013.	REP-330	REP-329

Document	Document reference contained in the RIES	Updated document reference
Statement of Common Ground (SoCG)		
E.ON Climate & Renewables UK Rampion Offshore Wind Limited and NE SoCG. 14 August 2013.	REP-229	REP-233
Responses to second questions (Deadline VII)		
E.ON Climate & Renewables UK Rampion Offshore Wind Limited. 15 October 2013.	REP-401	REP-366
NE. 15 October 2013.	REP-417	REP-409
RSPB and SOS. 15 October 2013.	REP-418	REP-410
Rule 17 response		
E.ON Climate & Renewables UK Rampion Offshore Wind Limited Rule 17 response (Part 1). 29 October 2013.	REP-442	REP-425
Written responses to Deadline VIII		
NE. 12 November 2013.	REP-447	REP-438
E.ON Climate & Renewables UK Rampion Offshore Wind Limited Rule 17 response (Part 2). 12 November 2013. Including: <ul style="list-style-type: none"> • NSER Report (Revision C) • matrices version 5 • ornithology work to address NE's written representations relating to marine ornithology 	REP-480 REP-482 REP-481	REP-474 REP-476 REP-475
Procedural decisions		
Letter from the ExA to Guernsey regarding 'other person' status. 22 November 2013.	PD-020	PD-021
Letter from the ExA to Scottish Natural Heritage (SNH) regarding 'other person' status. 22 November 2013.	PD-021	PD-022

Document	Document reference contained in the RIES	Updated document reference
Correspondence		
Email from SNH to the ExA. 26 November 2013.	Corr-01	PD-026
Written responses to Deadline IX		
NE. 28 November 2013.	REP-514	REP-507
RSPB and SOS. 28 November 2013.	REP-517	REP-510
Issue Specific Hearing 4 December 2013 (Biodiversity, biological environment, Ecology including HRA)		
NE. Annex A (gannet). 2 December 2013.	H-061	REP-513
NE. Annex B (kittiwake). 2 December 2013.	H-062	REP-514
Written responses to Deadline XI		
E.ON Climate & Renewables UK. Appendix 14: SoCG – Not Agreed update – Applicant and Natural England. 10 December 2013.	REP-564	REP-575
E.ON Climate & Renewables UK. Appendix 15: Additional Clarification on Ornithology in Relation to the Rampion Project. 10 December 2013.	REP-565	REP-576
NE. Summary of NE's Oral Representations. Issue Specific Hearing on Biodiversity, Biological Environment and Ecology Including HRA. 10 December 2013.	REP-569	REP-580
NE. Annex 1: Action 4: NE's In-combination Assessment tables (Annex A and B submission). 10 December 2013.	REP-570	REP-582



REPORT on the IMPLICATIONS for EUROPEAN SITES Proposed Rampion Offshore Wind Farm

An Examining Authority report prepared with the support
of the Environmental Services Team

13 December 2013

Report on the Implications for European Sites
Rampion Offshore Windfarm

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Report on the Implications for European Sites
Rampion Offshore Windfarm

1 INTRODUCTION

Background

- 1.1 E.ON Climate & Renewables UK Rampion Offshore Wind Limited (the applicant) has applied to the Secretary of State for a development consent order (DCO) under section 37 of the Planning Act 2008 (as amended) for the proposed Rampion Offshore Wind Farm which comprises of up to 175 wind turbines each with a generating capacity of between 3MW and 7MW, subject to a maximum installed capacity of 700MW, together with on and offshore infrastructure.
- 1.2 The proposed development would cover approximately 139km² and is located in Zone 6 of the Crown Estate Round 3 offshore wind zones. Zone 6 is located in the English Channel off the Sussex Coast in southern England and extends from approximately 13 to 25km offshore.
- 1.3 The offshore elements of the project comprise offshore wind turbines and their foundations, one or two offshore substations, subsea array cables between the turbines and the offshore substations, and export cables between the offshore substations and the shore. The design of the offshore elements (including the layout, turbine size and foundation type) has not yet been finalised.
- 1.4 The onshore elements of the project comprise the onshore electricity grid connection from landfall between East Worthing and Lancing to the national grid transmission system at Bolney substation.
- 1.5 The Secretary of State has appointed an Examining Authority (ExA) to conduct an examination of the application, to report its findings and conclusions, and to make a recommendation to the Secretary of State as to the decision to be made on the application.
- 1.6 The relevant Secretary of State is the competent authority for the purposes of the Habitats Directive¹ and the 2010 Habitats Regulations² for applications submitted under the Planning

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the 'Habitats Directive')

² The Conservation of Habitats and Species Regulations 2010 (as amended) (the 2010 Habitats Regulations). The Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (as amended) (Offshore Marine Regulations) will apply beyond UK territorial waters (12 nautical miles). These regulations are relevant when an application is submitted for an energy project in a renewable energy zone (except any part in relation to which the Scottish Ministers have functions).

Act 2008 regime (as amended). The findings and conclusions on nature conservation issues reported by the Examining Authority (ExA) will assist the Secretary of State in performing their duties under the Habitats Regulations. The purpose of the RIES is to provide the competent authority with a complete factual account of the information and evidence available to them for the purposes of undertaking their legal obligations as part of their habitats regulations assessment (HRA).

- 1.7 This report compiles, documents and signposts the information on the likely impacts of the project on European sites³ that has been provided within the DCO application, and submitted throughout the examination by both the applicant and interested parties. It is issued to ensure that interested parties including the statutory nature conservation bodies (Joint Nature Conservation Committee (JNCC) and Natural England (NE⁴)) are consulted formally on habitats regulations matters. This process may be relied on by the Secretary of State for the purposes of Regulation 61(3) of the Habitats Regulations.

Documents Used to Inform this Report

- 1.8 The applicant initially provided screening matrices as appendices to the No Significant Effects Report (NSER) (Revision A. December 2012. Document 5.3) (Doc Ref: APP-057) submitted with their DCO application. Subsequently, the applicant provided revisions to these matrices through the submission of the following five documents during the course of the examination:
- Rampion Offshore Wind Farm. NSER Revision B. 15 August 2013. Appendix 25 to the applicant's written response to first questions (Deadline II). (Doc Ref: REP-255)
 - Rampion Offshore Wind Farm. Habitats Regulations Assessment Matrices. Version 3. 15 October 2013. Appendix 5 to the applicant's written response to second questions (Deadline VII). (Doc Ref: REP-380)
 - Rampion Offshore Wind Farm. Habitats Regulations Assessment Matrices. Version 4. 29 October 2013. Appendix 1 of the Rule 17 response (Part 1) for further information

³ European sites include Special Areas of Conservation (SACs), candidate Special Areas of Conservation (cSACs) and Special Protection Areas (SPAs) which are protected under the Habitats Regulations. As a matter of policy, the Government also applies the procedures of the Habitats Regulations 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.

⁴ Paragraph 2.2.5 of the Statement of Common Ground (SoCG) between the applicant and NE (14 August 2013) (Doc Ref: Rep-229) confirms that NE and JNCC have agreed that NE is the main adviser with respect to the project in matters relating to nature conservation matters, given that the project is located largely within the 12nm limit.

relating to outstanding Habitats Regulations assessment work and matrices. (Doc Ref: REP-402)

- Rampion Offshore Wind Farm. NSER Revision C. Appendix 1 of the Rule 17 response (Part 2) for further information relating to outstanding Habitats Regulations assessment work and matrices. (Deadline VIII (12 November 2013) (Doc Ref: REP-480))
- Rampion Offshore Wind Farm. Habitats Regulations Assessment Matrices. Version 5. Appendix 3 of the Rule 17 response (Part 2) for further information relating to outstanding Habitats Regulations assessment work and matrices. (Deadline VIII (12 November 2013) (Doc Ref: REP-482))

1.9 The matrices present the applicant's evidence on whether the project, alone or in-combination with other projects, potentially affects a European site, and whether it is likely to have a significant impact on key features of each European site.

1.10 The revisions to the matrices submitted by the applicant for Deadline VIII (12 November 2013 (Version 5) (Doc Ref: REP-482)) have been taken by the ExA to be the definitive version and have been used and updated with other information from the examination for this report by the Examining Authority, with the support of the Environmental Services Team of the Planning Inspectorate.

1.11 In addition to the various iterations of the NSER and matrices that are detailed above, the following documents and hearings have been referred to in this RIES:

Application Documents

- Rampion Offshore Wind Environmental Statement. Section 6 – Physical Environment. December 2012. Document 6.1.6. (Doc Ref: APP-065)
- Rampion Offshore Wind Environmental Statement. Section 7 – Benthos and Sediment Quality. December 2012. Document 6.1.7. (Doc Ref: APP-066)
- Rampion Offshore Wind Environmental Statement. Section 9 – Nature Conservation. December 2012. Document 6.1.9. (Doc Ref: APP-068)
- Rampion Offshore Wind Environmental Statement. Section 11 – Marine Ornithology. December 2012. Document 6.1.11. (Doc Ref: APP-070)
- Rampion Offshore Wind Environmental Statement. Section 24 – Terrestrial Ecology. December 2012. Document 6.1.24. (Doc Ref: APP-083)

Relevant Representations

- NE. 10 May 2013. (Doc Ref: REP-158)
- Royal Society for the Protection of Birds (RSPB). 10 May 2013. (Doc Ref: REP-184)

Written Representations

- E.ON Climate & Renewables UK Rampion Offshore Wind Limited. Clarification of Collision Risk. 15 August 2013. (Doc Ref: REP-252)
- NE. 15 August 2013. (Doc Ref: REP-297)

Responses to first questions (Deadline II)

- E.ON Climate & Renewables UK Rampion Offshore Wind Limited. 15 August 2013. (Doc Ref: REP-308)
- NE. 15 August 2013. (Doc Ref: REP-327)
- RSPB and Sussex Ornithological Society (SOS). 14 August 2013. (Doc Ref: REP-330)

Statement of Common Ground (SoCG)

- E.ON Climate & Renewables UK Rampion Offshore Wind Limited and NE SoCG. 14 August 2013. (Doc Ref: REP-229)

Responses to second questions (Deadline VII)

- E.ON Climate & Renewables UK Rampion Offshore Wind Limited. 15 October 2013. (Doc Ref: REP-401)
- NE. 15 October 2013. (Doc Ref: REP-417)
- RSPB and SOS. 15 October 2013. (Doc Ref: REP-418)

Rule 17 response

- E.ON Climate & Renewables UK Rampion Offshore Wind Limited Rule 17 response (Part 1). 29 October 2013. (Doc Ref: REP-442)

Written responses to Deadline VIII

- NE. 12 November 2013. (Doc Ref: REP-447)
- E.ON Climate & Renewables UK Rampion Offshore Wind Limited Rule 17 response (Part 2). 12 November 2013. Including NSER Report (Revision C) (Doc Ref: REP-480) and matrices version 5 (Doc Ref: REP-482), and ornithology work to address NE's written representations relating to marine ornithology (Doc Ref: REP-481)

Procedural decisions

- Letter from the ExA to Guernsey regarding 'other person' status. 22 November 2013. (Doc Ref: PD-020)
- Letter from the ExA to Scottish Natural Heritage (SNH) regarding 'other person' status. 22 November 2013. (Doc Ref: PD-021)

Correspondence

- Email from SNH to the ExA. 26 November 2013. (Doc Ref: Corr-01)

Written responses to Deadline IX

- NE. 28 November 2013. (Doc Ref: REP-514)
- RSPB and SOS. 28 November 2013. (Doc Ref: REP-517)

Issue Specific Hearing 4 December 2013 (Biodiversity, biological environment, Ecology including HRA)

- NE. Annex A (gannet). 2 December 2013. (Doc Ref: H-061)
- NE. Annex B (kittiwake). 2 December 2013. (Doc Ref: H-062)
- The above written evidence to this last hearing has been supplemented by oral evidence from that hearing. An audio recording of the hearing is available here:
<http://infrastructure.planningportal.gov.uk/projects/south-east/rampion-offshore-wind-farm/?ipcsection=docs&stage=4&filter=Hearings>

Written responses to Deadline XI

1.12 Supplementary HRA information was submitted by the applicant and NE as part of the Written Response to Deadline XI (10 December 2013). This was two days before the RIES was issued. In the time available, it has been possible to include the conclusions of these documents in the RIES. In responding to the RIES, consultees are advised to fully consider these documents and that the documents are read in conjunction with the RIES. The relevant documents are set out below:

- E.ON Climate & Renewables UK. Appendix 14: SoCG – Not Agreed update – Applicant and Natural England. 10 December 2013. (Doc Ref: REP-564)
- E.ON Climate & Renewables UK. Appendix 15: Additional Clarification on Ornithology in Relation to the Rampion Project. 10 December 2013. (Doc Ref: REP-565)

- NE. Summary of NE's Oral Representations. Issue Specific Hearing on Biodiversity, Biological Environment and Ecology Including HRA. 10 December 2013. (Doc Ref: REP-569.)
- NE. Annex 1: Action 4: NE's In-combination Assessment tables (Annex A and B submission). 10 December 2013. (Doc Ref: REP-570)

The written responses to Deadline XI are available here:
<http://infrastructure.planningportal.gov.uk/projects/south-east/rampion-offshore-wind-farm/?ipcsection=docs&stage=4>

Structure of this Report

1.13 The remainder of this report is in three parts:

- (i) Section 2 identifies the European sites, potential impacts, mitigation measures and main issues that were considered within the HRA process,
- (ii) Section 3 comprises screening matrices for the European sites that might potentially be affected by the project (Stage 1 of the HRA process). These matrices collate evidence on whether the project is likely to have significant effects on the key features of each European site alone, or in-combination with other projects. Through the process of the Examination, the European sites for which a likely significant effect is identified on one or more of its key features are taken forward to Section 4 of this report,
- (iii) Section 4 comprises matrices for the European sites identified in Section 3 for which a likely significant effect cannot be excluded. The matrices summarise the anticipated effects on the integrity of the European sites, in the context of its/their conservation objectives (Stage 2 of the HRA process).

2 KEY POINTS

European Sites

- 2.1 The project is not connected with or necessary to the management for nature conservation of any of the European sites considered within the assessment.
- 2.2 The applicant's NSER Report Revision A identified the following European sites for inclusion within the assessment:
 - Chichester and Langstone Harbour Special Protection Area (SPA) and Ramsar
 - Portsmouth Harbour SPA and Ramsar
 - Solent and Southampton Water SPA and Ramsar
 - Pagham Harbour SPA
 - Dungeness to Pett Levels SPA
 - Baie de Seine Occidentale SPA (Iles de Saint Marcouf)
 - Alderney West Coast and the Burhou Islands Ramsar site
 - Archipel des Sept-Iles SPA, and
 - Flamborough Head and Bempton Cliffs SPA
- 2.3 The applicant's NSER Report Revision B provided additional screening matrices for the following European sites:
 - Solent Maritime Special Area of Conservation (SAC)
 - South-Wight Maritime SAC
 - Solent and Isle of Wight Lagoons SAC
 - Bassurelle-Sandbank Site of Community Importance (SCI) (note, the applicant's matrices referred to this site as a SAC)
 - Wight-Barfleur Reef candidate SAC (cSAC) (note, the applicant's matrices referred to this site as a SAC)
 - Dungeness SAC
 - Hastings Cliff SAC
 - Lyme Bay and Torbay SCI (note, the applicant's matrices referred to this site as a SAC), and
 - Margate and Long Sands SCI (note, the applicant's matrices referred to this site as a SAC).
- 2.4 Appendix 1 of the applicant's Rule 17 response (Part 1) for further information relating to outstanding Habitats Regulations assessment work and matrices (29 October 2013) (Doc Ref: REP-402) contained screening matrices for the following further European sites:

- Forth Islands SPA, and
 - Alde-Ore Estuary SPA and Ramsar.
- 2.5 All of the above European sites were included in the applicant's final version of the matrices (Version 5) (Doc Ref: REP-482).
- 2.6 NE's relevant representation (10 May 2013) (Doc Ref: REP-158) also highlighted the other European sites as potentially being affected by the proposed development as follows:
- East Devon Heaths SPA
 - Dorset Heathlands SPA (and Ramsar)
 - New Forest SPA (and Ramsar)
 - Wealden Heaths (I & II) SPA
 - Ashdown Forest SPA, and
 - Thames Basin Heath SPA.
- 2.7 The applicant did not provide matrices for the above six European sites. It was noted from NE's relevant representation that the concern over these sites related to nightjars which are a designated feature of these sites. The ES states that *'there will be no direct impact to habitat which is used by breeding Nightjars (heathland and heathland/woodland margins) given the distance to known populations at the designated sites. However, migrating Nightjars fly at night and therefore they could be disturbed by lighting along their migration routes. It should be noted that 24 hour lighting is proposed at the 4 main [Horizontal Directional Drilling] locations. However, three of these locations are within or border the conurbation of Worthing and are therefore subject to lighting impacts associated with urban development. Therefore, only one main HDD at the River Adur crossing will require lighting within a rural setting'* (ES paragraph 24.5.80) and that *'a lighting strategy will be prepared and agreed with [West Sussex County Council] to minimise light spill at this location'* (ES paragraph 24.6.97) (Doc Ref: APP-083). Collision risk modelling for nightjars from Ashdown Forest SPA, Thames Basin Heaths SPA and Wealden Heaths Phases I and II predicted a collision risk of 1.3 per year, applying a precautionary 98% avoidance rate; this would be equivalent to a 0.4% increase over the baseline mortality and would be of negligible magnitude (ES paragraph 11.6.64-11.6.68 of Doc Ref: APP-070).
- 2.8 The applicants SoCG with NE states that 'it is agreed that the impacts on nightjar has been adequately assessed, as agreed with the RSPB, and that no further assessment is required' (paragraph 3.8.4 of Doc Ref: REP-229). This was confirmed by NE at Issue Specific Hearing held on 4 December 2013. The RSPB relevant representation states 'during pre-application consultation, the RSPB raised the potential collision risk to migrating nightjars. The RSPB welcomes the inclusion of analysis for this species, and agrees that a 0.4% increase over baseline mortality would not be a significant impact on SPA populations' (Doc Ref: REP-184).

- 2.9 As agreement has been reached between the applicant, NE and RSPB regarding the potential impacts on nightjars such that no significant impact has been identified, matrices for these European sites have not been produced for this RIES.
- 2.10 ES Section 9 (Doc Ref: APP-068) paragraph 9.5.5 identifies Pevensey Level SAC as being located within the study area (c.100km of the proposed development), although the exact distance or direction from the project site has not been provided. The ES states the site is not considered further due to the distance from the development, and as the designated feature (ramshorn snail) is of limited relevance to the intertidal/marine environment of western Sussex. No concerns have been raised by NE over this European site. A screening matrix for the site was not provided by the applicant, nor, on the basis of this justification, has one been produced for this report.

Potential Impacts

- 2.11 The applicant's matrices identified the following potential impacts upon the European sites; these have been considered in the matrices within this report.

Potential impacts considered within the matrices

Designated sites	Impacts identified in submission information	Presented in matrices as
Chichester and Langstone Harbour SPA Portsmouth Harbour SPA Solent Marshes and Southampton Water SPA Pagham Harbour SPA Dungeness to Pett Levels SPA Baie de Seine Occidentale SPA (Iles de Saint Marcouf) Alderney West Coast and the Burhou Islands Ramsar site Archipel des Sept-Iles SPA	Disturbance and displacement of marine birds during the construction of the wind farm and the export cable(s) landfall Disturbance and displacement of marine birds during the operation of the wind farm Disturbance and displacement of marine birds during the decommissioning of the wind farm Disturbance and displacement of shorebirds during decommissioning of the grid connection landfall,	Disturbance

Designated sites	Impacts identified in submission information	Presented in matrices as
Flamborough Head and Bempton Cliffs SPA Forth Islands SPA. Alde-Ore Estuary SPA/Ramsar	and Disturbance effects on prey species.	
	Mortality through collision with the wind turbines during operation.	Collision Risk
	Barrier effect of the wind farm on bird flight lines during operation	Barrier Effect
	Physical loss of or damage to supporting habitat	Not considered given the distance of the SPAs from the works (min 28km)
	Toxic contamination and non-toxic contamination	
Solent Maritime SAC South-Wight Maritime SAC Solent and Isle of Wight Lagoons SAC Bassurelle-Sandbank SAC Wight-Barfleur Reef SAC Dungeness SAC Hastings Cliff SAC Lyme Bay and Torbay SAC, and Margate and Long Sands SAC	Increased suspended sediment concentrations	Suspended sediment
	Increasing seabed thickness	Seabed thickness
	Changes to hydrodynamic regime	Hydrodynamics

In-combination impacts

2.12 Table 5 of the NSER (Revision C (Doc Ref: REP-480)) lists the following offshore wind farm projects that have been included in the in-combination collision risk assessment:

- Beatrice Demonstrator
- Gunfleet Sands 1-3
- Lynn and Inner Dowsing
- Scroby Sands
- Teesside
- Thanet
- Greater Gabbard
- Lincs
- Sheringham Shoal
- Kentish Flats and extension
- London Array 1-2
- Blyth Demonstrator
- Dudgeon
- Galloper
- Humber Gateway
- Race Bank
- Triton Knoll
- Westermost Rough
- Aberdeen European Offshore Wind Deployment Centre
- Dogger Bank Creyke Beck
- East Anglia One
- Hornsea Project One
- Rampion
- Inch Cape
- Neart na Gaoithe
- Moray Firth
- Beatrice
- Dogger Bank Teesside A & B
- Dogger Bank Teesside C & D
- East Anglia 3 & 4
- Fecamp
- Hornsea Project Two
- Navitus Bay
- Seagreen Alpha
- Seagreen Bravo

2.13 The SPA species for which in-combination collision risk was considered were:

- gannet
- kittiwake
- lesser black-backed gull
- great black backed gull
- common tern
- arctic tern

2.14 The applicant initially proposed to assess in-combination collision risk on these species in their updated draft proposed scope of works to address Natural England's written representations relating to marine Ornithology (Appendix 4 of the applicant's response to the Rule 17 request (29

October 2013 (Doc Ref: REP-442)). In-combination collision risk on the species was subsequently assessed in the applicant's Rule 17 response 'Ornithology work to address NE's written representations relating to marine ornithology' (12 November 2013 (Doc Ref: REP-481)). In-combination collision risk has not been considered for other species; however, NE's written response to Deadline VIII (Doc Ref: REP-447) states that NE is content with the applicant's ornithology scope of works.

- 2.15 NE submitted their own assessment of in-combination impacts on gannets and kittiwakes from the Flamborough Head and Bempton Cliffs SPA (2 December 2013, Doc Refs: H-061 and H-062). This information did not identify any additional projects to those listed above.
- 2.16 Subsequent to the Issue Specific Hearing on 4 December 2013, and in response to NE's in-combination assessment, the applicant presented its own assessment of in-combination collision risk effects on kittiwake and gannet for the Flamborough Head and Bempton Cliffs SPA in its Written Response to Deadline XI: Appendix 15: Additional Clarification on Ornithology in Relation to the Rampion Project. (Doc Ref: REP-565).
- 2.17 In-combination construction impacts are only considered to occur if construction, and specifically piling, were to take place at same time at sites with overlapping potential impact zones. The only project identified is Navitus Bay offshore wind farm (ES paragraph 11.9.10 (Doc Ref: APP-070)).
- 2.18 In-combination impacts have not been considered for other potential impacts.

Likely significant effects

- 2.19 The applicant's screening assessment concluded that the project is not likely to give rise to significant effects on any European sites.
- 2.20 At the Issue Specific Hearing on 4 December 2013 NE agreed that, for the Rampion OWF alone, a likely significant effect could be excluded. In respect of sites in UK territories, NE stated that on the basis of the information submitted at the time of the hearing a likely significant in-combination effect could be excluded for all impacts, sites and features with the exception of:
 - collision mortality in respect of gannet at Alderney West Coast and the Burhou Islands Ramsar
 - collision mortality in respect of gannet at Flamborough Head and Bempton Cliffs SPA
 - collision mortality in respect of kittiwake at Flamborough Head and Bempton Cliffs SPA
- 2.21 Accordingly, NE advised that further assessment of the effects on integrity of these sites would be necessary.

2.22 As stated above, the applicant presented its own assessment of in-combination collision risk effects on kittiwake and gannet for the Flamborough Head and Bempton Cliffs SPA. No further detailed assessment of collision mortality in respect of gannet at Alderney West Coast and the Burhou Islands Ramsar has been provided by the applicant. This is considered further in screening and integrity matrices below.

3 STAGE 1: SCREENING FOR LIKELY SIGNIFICANT EFFECTS

Background

- 3.1 The project is not connected with or necessary to the management for nature conservation of the European sites considered within the assessment.
- 3.2 This section reports on the screening for likely significant effects of the project in relation to the potentially affected European sites.

Stage 1 Matrices Key

- ✓ = Likely significant effect cannot be excluded
 - ✗ = Likely significant effect can be excluded
 - C = construction
 - O = operation
 - D = decommissioning
 - P = Primary feature
 - Q = Qualifying feature
- 3.3 Evidence supporting the conclusions is detailed in footnotes for each table with reference to relevant supporting documentation. The footnotes for the SPA and Ramsar sites are contained after each of the matrices, however the footnotes for all of the SACs and SCIs are identical, therefore in order to avoid repetition they have been provided after the final SAC Stage 1 matrix in 'SAC and SCI matrices footnotes'.
 - 3.4 Where an impact is not considered relevant for a feature of a European site, the cell in the matrix is formatted as follows:



SPA Stage 1 Matrix A: Chichester and Langstone Harbour SPA and Ramsar

Site Code: SPA – UK 9011011, Ramsar - UK11013

Distance to project: 35km

European site features	Likely Effects of NSIP											
	Disturbance			Collision Risk			Barrier Effect			In-combination effects		
	C	O	D	C	O	D	C	O	D	C	O	D
Bar-tailed godwit (<i>Limosa lapponica</i>) (SPA only over-winter)	x _a	x _a	x _{a, s}		x _{b, p}		x _c	x _c	x _{c, s}	x _{q, r}	x _r	x _{r, s}
Black-tailed godwit (<i>Limosa limosa islandica</i>) (SPA only over-winter, Ramsar spring and autumn)	x _d	x _d	x _d		x _{d, p}		x _d	x _d	x _{d, s}	x _{q, r}	x _r	x _{r, s}
Common redshank (<i>Tringa tetanus</i>) (SPA only over-winter, Ramsar spring and autumn))	x _e	x _e	x _{e, s}		x _{e, p}		x _c	x _c	x _{c, s}	x _{q, r}	x _r	x _{r, s}
Common shelduck (<i>Tadorna tadorna</i>) (SPA and Ramsar over-winter)	x _d	x _d	x _d		x _d		x _d	x _d	x _{d, s}	x _{q, r}	x _r	x _{r, s}

European site features	Likely Effects of NSIP											
	Disturbance			Collision Risk			Barrier Effect			In-combination effects		
	C	O	D	C	O	D	C	O	D	C	O	D
Common tern (<i>Sterna hirundo</i>) (breeding) ⁴	xf	xf	xf, s		xg, p		xc	xc	xc, s	xq, r	xt	xr, s
Dark-bellied brent goose (<i>Branta bernicla bernicla</i>) (SPA and Ramsar over-winter)	xa	xa	xa, s		xh, p		xc	xc	xc, s	xq, r	xr	xr, s
Dunlin (<i>Calidris alpina alpina</i>) (SPA and Ramsar over-winter)	xe	xe	xe, s		xe, p		xc	xc	xc, s	xq, r	xr	xr, s
Eurasian curlew (<i>Numenius arquata</i>) (SPA only over-winter)	xi	xi	xi, s		xj		xc	xc	xc, s	xq, r	xr	xr, s
Eurasian teal (<i>Anas crecca</i>) (SPA only over-winter)	xi	xi	xi, s		xj		xc	xc	xc, s	xq, r	xr	xr, s
Eurasian wigeon (<i>Anas Penelope</i>) (SPA only over-winter)	xk	xk	xk, s		xk		xk	xk	xk, s	xq, r	xr	xr, s
Grey plover (<i>Pluvialis squatarola</i>) (SPA	xd	xd	xd		xd, p		xd	xd	xd, s	xq, r	xr	xr, s

⁴ Feature is a SPA citation species for Chichester and Langstone Harbours SPA and the Pagham Harbour SPA, but was not listed as a qualifying feature for either at the time of the SPA Review. (E.on Written Response to Deadline II (15 August 2013): Appendix 9).

European site features	Likely Effects of NSIP											
	Disturbance			Collision Risk			Barrier Effect			In-combination effects		
	C	O	D	C	O	D	C	O	D	C	O	D
and Ramsar over-winter)												
Little egret (<i>egretta garzetta</i>) (SPA only over-winter and onpassage)	x _d	x _d	x _d		x _d		x _d	x _d	x _{d, s}	x _{q, r}	x _r	x _{r, s}
Little tern (<i>Sterna albifrons</i>) (SPA and Ramsar breeding)	x _l	x _l	x _{l, s}		x _m		x _{c, l}	x _{c, l}	x _{c, l, s}	x _{q, r}	x _r	x _{r, s}
Northern pintail (<i>Anas acuta</i>) (SPA only over-winter)	x _d	x _d	x _d		x _d		x _d	x _d	x _{d, s}	x _{q, r}	x _r	x _{r, s}
Northern shoveler (<i>Anas clypeata</i>) (SPA only over-winter)	x _d	x _d	x _d		x _d		x _d	x _d	x _{d, s}	x _{q, r}	x _r	x _{r, s}
Red-breasted merganser (<i>Mergus serrator</i>) (SPA only over-winter)	x _i	x _i	x _{i, s}		x _j		x _c	x _c	x _{c, s}	x _{q, r}	x _r	x _{r, s}
Ringed plover (<i>Charadrius hiaticula</i>) (SPA only over-winter and onpassage, Ramsar spring and autumn)	x _d	x _d	x _d		x _{d, p}		x _d	x _d	x _{d, s}	x _{q, r}	x _r	x _{r, s}
Ruddy turnstone (<i>Arenaria interpres</i>) (SPA only over-winter)	x _d	x _d	x _d		x _d		x _d	x _d	x _{d, s}	x _{q, r}	x _r	x _{r, s}
Sanderling (<i>Calidris</i>	x _d	x _d	x _d		x _d		x _d	x _d	x _{d, s}	x _{q, r}	x _r	x _{r, s}

European site features	Likely Effects of NSIP											
	Disturbance			Collision Risk			Barrier Effect			In-combination effects		
	C	O	D	C	O	D	C	O	D	C	O	D
<i>alba</i>) (SPA only over-winter)												
Sandwich tern (<i>Sterna sandvicensis</i>) (breeding)	xn	xn	xn, s		xo		xc	xc	xc, s	xq, r	xr	xr, s
Wintering waterfowl assemblage (SPA)	xu	xu	xu		xu		xu	xu	xu	xu	xu	xu

Evidence

- a. Species recorded within wind farm during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)). However, no habitat within potential disturbance zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement).

NSER Revision C paragraphs 1.8.7 and 1.8.54 (Doc Ref: REP-480) and NSER Revision C Table 2 (Doc Ref: REP-480) indicates the species was only seen overflying the area on migration, not making use of its ecological resources. Species not considered at risk of disturbance.

- b. Bar-tailed godwit: Species recorded flying at rotor height in wider survey area during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)), and APEM Migropath modelling predicts this species is likely to migrate through the wind farm site (NSER Revision C Table 4 (Doc Ref: REP-480)).

At the 98% avoidance rate, collision modelling demonstrated 14.2 collisions per year resulting in a 3.4% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070) and NSER Revision C paragraph 1.8.54 (Doc Ref: REP-480)). As shorebirds are recognised by RSPB/BirdLife as a group that is not particularly vulnerable to collision (Langston and Pullan, 2003), it is not considered that the collision risk would be significant and that the actual collision risk would be rather lower than predicted (NSER Revision C paragraph 1.8.54 (Doc Ref: REP-480)).

APEM collision risk assessment update for migrant waterfowl (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)) has predicted 0.49 collisions in a 770 annual migrant estimation (the annual numbers of flights through the Rampion Wind Farm Site predicted by APEM Migropath (see NSER Revision C Table 4 (Doc Ref: REP-480)) at 98%

avoidance rate. The impact on the migrant population is predicted to be negligible. (Note this has not been apportioned by European site.)

Collision risk has not been apportioned to site.

NE confirmed at the Issue Specific Hearing on 4 December 2013 that this species was part of the waterbird migration modelling and that it is satisfied with the information provided and therefore with this species at this SPA. A likely significant effect can therefore be excluded.

- c. Given the extent of the offshore project and its orientation in relation to the main seabird migration route up/down the English Channel, a barrier effect would not result in either reduced utilisation of an ecological resource (through birds no longer being able to reach it through the barrier) or significantly increased energy expenditure by the birds in flying around the barrier (ES paragraph 11.6.29-31 (Doc Ref: APP-070)).
- d. Species not recorded during baseline surveys (ES Tables 11.6 and 11.12 (Doc Ref: APP-070) and NSER Revision C Table 2 (Doc Ref: REP-480)) therefore there is no pathway for disturbance, barrier effects or collision risk. Collision risk modelling not undertaken for the species.

APEM Migropath modelling has not identified any of these species as potential migrants through the proposed wind farm with the exception of grey plover and ringed plover (NSER Revision C Table 4 (Doc Ref: REP-480)). For grey plover there is none of their habitat within the potential disturbance zone around the wind farm or any important flight routes that could be vulnerable to any barrier effect. As no flights at all were observed within the collision risk zone, that risk would be negligible and would not result in any likely significant effect. (NSER Revision C paragraph 1.8.55 (Doc Ref: REP-480)).

APEM collision risk assessment update for migrant waterfowl (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)) predicted collision risk at 98% avoidance rate for ringed plover as 1.37 (breeding) and 2.39 (non-breeding) collisions of a 818 and 1420 annual migrant population estimations respectively. This has been assessed as being of a negligible magnitude impact. (Note this has not been apportioned by European site.)

NE has not raised any concerns regarding these species.

- e. Common redshank and dunlin: No flights were observed within the collision risk zone and none at rotor height across the whole survey area (as such collision risk modelling was not undertaken for this species) and it is considered that there is no pathway for disturbance or barrier effects. However, APEM Migropath modelling predicts species is likely to migrate through the wind farm site (NSER Revision C Table 4 (Doc Ref: REP-480)). APEM collision risk assessment update for migrant waterfowl (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)) predicted collision risk at 98% avoidance rate as: common redshank = 0.41 (breeding) and 1.29 (non-breeding) collisions of a 214 and 666 annual migrant estimations (the annual numbers of flights through the Rampion Wind Farm Site predicted by

APEM Migropath (see NSER Revision C Table 4 (Doc Ref: REP-480)), respectively; dunlin = 0.16 (breeding and passage population) collisions of a 96 annual migrant estimation. (Note this has not been apportioned by European site.)

NE has not raised any concerns regarding collision risk for this species from this European site.

- f. Common tern: The baseline surveys have shown some use of the survey area by this species (a peak population estimate of 40 was recorded within the project site and a peak of 172 within 4km), but the potential impact zone does not support any particular habitat that would be expected to be important to this species, being only a very small part of a much wider feeding area (NSER Revision C paragraph 1.8.34 (Doc Ref: REP-480)). The project site is located beyond the species mean maximum foraging range (15km), and the maximum foraging range (30km) from the European site (NSER Revision C paragraph 1.8.37 (Doc Ref: REP-480)). Given this, any disturbance effect during construction and operation would be of negligible magnitude and would not result in any likely significant effect (NSER Revision C paragraph 1.8.34 (Doc Ref: REP-480)).
- g. Common tern: Species observed as present within the collision zone but all flights below rotor height (NSER Revision C Table 2 (Doc Ref: REP-480)). APEM Migropath modelling predicts species is likely to migrate through the wind farm site (NSER Revision C Table 4 (Doc Ref: REP-480)), and Annex 1 of RSPB and SOS's Written Response to Deadline II (Doc Ref: REP-330) states that one of the spring migration lines of the species pass through the Solent.

At the 98% avoidance rate, collision modelling demonstrated 7.4 collisions per year, resulting in a 1.1% increase in baseline mortality for the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). The seasonal breakdown of collisions is defined as: spring 7.2, breeding 0.1, autumn 0.1 and winter 0 (Task 22 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

When apportioning the predicted collision risk proportionately (between Chichester and Langstone Harbours SPA, Solent Marshes and Southampton Water SPA, Pagham Harbour SPA and the Dungeness to Pett Levels SPA) by the population size of this SPA (155 pairs), this gives a predicted collision risk of 2.6 collisions per year for this SPA which is considered to be of negligible magnitude and would not give rise to any likely significant effects (The applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)).

When considered against the Biologically Defined Minimum Population (BDMP) (North Sea), the predicted annual collision risk would represent an increase of 0.04% over the existing baseline mortality, an effect of negligible magnitude that would not be significant. As the predicted mortality for the species at Rampion wind farm is below the 1% threshold, the magnitude of the collision risk to these species is considered negligible in the context of the BDMP population and no further population modelling has been carried out for this species (Task 23 of Ornithology Work to

address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

The applicant considers this to be a precautionary assessment on the basis of recommendations by Maclean et al. (2009) of the use of an avoidance rate of 99% for terns (NSER Revision C paragraph 1.8.35 (Doc Ref: REP-480)).

APEM collision risk assessment update for migrant waterfowl (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)) has predicted 0.35 collisions in a 1580 annual migrant estimation (the annual numbers of flights through the Rampion Wind Farm Site predicted by APEM Migropath (see NSER Revision C Table 4 (Doc Ref: REP-480)) at 98% avoidance rate which is considered negligible magnitude. (Note this has not been apportioned by European site.)

- h. Dark-bellied brent goose: Species observed flying at rotor height during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)). At the 98% avoidance rate, collision modelling demonstrated 5.7 collisions per year resulting in a 0.3% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). When apportioning the predicted collision risk proportionately (between the Chichester and Langstone Harbours SPA, the Portsmouth Harbour SPA, the Solent Marshes and Southampton Water SPA, and the Pagham Harbour SPA) by the population size of this SPA (14,532 individuals), this gives a predicted collision risk of 3.7 collisions per year for this SPA which is considered to be of negligible magnitude and would not give rise to any likely significant effects (The applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)).

APEM collision risk assessment update for migrant waterfowl (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)) has predicted 0.22 collisions in a 148 annual migrant estimation (the annual numbers of flights through the Rampion Wind Farm Site predicted by APEM Migropath at 98% avoidance rate which is considered negligible magnitude (see NSER Revision C Table 4 (Doc Ref: REP-480)). (Note this has not been apportioned by European site.)

- i. Species recorded in wider survey area during baseline surveys, but outside potential disturbance impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement). However, no habitat within potential disturbance zone (NSER Revision C paragraph 1.8.55 (Doc Ref: REP-480)) and NSER Revision C Table 2 (Doc Ref: REP-480) indicates the species were only seen overflying the area on migration, not making use of its ecological resources. Species not considered at risk of disturbance.
- j. Species recorded in wider survey area during baseline surveys, but no flights observed within the collision risk zone (NSER Revision C Table 2 (Doc Ref: REP-480)). APEM Migropath modelling has not identified this species a potential migrant through the proposed wind farm (NSER Revision C Table 4 (Doc Ref: REP-480)). Collision risk would be very low and would not result in any likely significant effect (NSER Revision C paragraphs 1.8.51, 1.8.52, 1.8.55 and 1.8.56 (Doc Ref: REP-480)).

- k. Eurasian wigeon: Species recorded in wider survey area during baseline surveys, but outside potential impact zone (NSER Revision C Table 2 (Doc Ref: REP-480)). No habitat within the potential disturbance zone around the wind farm nor any important flight routes that could be vulnerable to any barrier effect have been identified. There was only a single record of 2 birds seen during all surveys, no flights at all were observed within the collision risk zone and no flights at all were observed at rotor height across the whole survey area, therefore the collision risk would be low and would not result in any likely significant effect. (NSER Revision C paragraph 1.8.5 (Doc Ref: REP-480)0). No concerns regarding this species have been raised by either NE or RSPB.
- l. Little tern: Species recorded in wider survey area during baseline surveys, but outside potential disturbance impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (NSER Revision C Table 2 (Doc Ref: REP-480)). Predominantly a coastal species, as found in the baseline surveys, and would not be expected to occur frequently as far out at sea as the wind farm would be located. The project site is beyond the species maximum foraging range (11km) from the European site. Disturbance risk and barrier effects to this species would therefore be negligible and would not result in any likely significant effect. (NSER Revision C paragraphs 1.8.37 and 1.8.56 (Doc Ref: REP-480) and ES Table 11.5 (Doc Ref: APP-070)).
- m. Little tern: Species recorded in wider survey area during baseline surveys, but no flights observed within the collision risk zone (NSER Revision C Table 2 (Doc Ref: REP-480)). APEM Migropath modelling has not identified this species a potential migrant through the proposed wind farm (NSER Revision C Table 4 (Doc Ref: REP-480)). Collision risk would be very low and would not result in any likely significant effect (NSER Revision C paragraphs 1.8.51, 1.8.52, 1.8.55 and 1.8.56 (Doc Ref: REP-480))
- n. Sandwich tern: Species recorded in wider survey area during baseline surveys, but outside potential impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (NSER Revision C Table 2 (Doc Ref: REP-480)). The sandwich tern colony in the European site is Langstone which is 54km from the project site by the minimum sea route; the project site is beyond the species mean maximum foraging distance (49km) from the European site. As a result any disturbance effect during construction and operation would be of negligible magnitude and would not result in any likely significant effect. (NSER Revision C paragraphs 1.8.38-1.8.40 (Doc Ref: REP-480)).

The modelled noise contour maps (shown in ES Figures 8.5 – 8.10) indicate the extent of the zones over which there could be auditory damage to fish (>130dBht), strong avoidance by fish (90-130 dBht) and significant avoidance by fish (75-90dBht). The Langstone colony is 21km from the nearest point where the predicted noise exceeds 75dBht, therefore there is an overlap of the sandwich tern foraging range with the modelled potential noise impact zone, although it would be expected that the large majority of the colony's foraging would normally take place outside this area of overlap. Piling noise would be generated for approximately one-twelfth of any given monthly period and will

take place during the day and throughout the night where possible. Sandwich terns are not known to feed at night, therefore piling in the hours of darkness will further reduce the daylight time in which prey species are potentially exposed to behaviour-changing levels of noise.

The predicted noise contours represent a worst-case, and impacts will vary between the prey species on which terns are most likely to be feeding on in this area. Sandeels are likely to be an important food resource for the sandwich terns in this region; they have a low sensitivity to noise and the 75dBHt contour is smaller for sandeels than clupeids. Sandeels would therefore be available as a food resource over a greater area as they would be unaffected by piling within the sandwich terns foraging range. Any displacement of clupeids (that are in the potential foraging range of the Langstone colony) during piling would be away from the source of noise; this could result in clupeids being displaced west, northwest, and southwest towards the Langstone colony, potentially resulting in increased abundance nearer the colony. (NSER Revision C paragraphs 1.8.41-1.8.47 (Doc Ref: REP-480)).

NE's response to 2Q.23 of Deadline IX (28 November 2013, Doc Ref: REP-514) states that they do not agree the applicant has fully justified why the potential indirect impacts on sandwich tern at the site will not be significant. However, it does agree that the Chichester & Langstone colony at 21km from the limit of the clupeid impact zone is unlikely to be significantly impacted, especially if, as is likely, sandeels which are less sensitive to noise than clupeids, also form a major component of the terns' diet. On the basis of these considerations, NE concurs with the conclusion of no likely significant effect and does not consider it necessary for piling restrictions to mitigate for impacts on Sandwich tern.

- o. Sandwich tern: Species recorded in wider survey area during baseline surveys, but outside potential impact zone, and seen overflying the area on migration, not making use of its ecological resources (NSER Revision C Table 2 (Doc Ref: REP-480)). APEM Migropath modelling has not identified this species as a potential migrant through the proposed wind farm (NSER Revision C Table 4 (Doc Ref: REP-480)).

At the 98% avoidance rate, collision modelling demonstrated 0.5 collisions per year, resulting in a 0.5% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). All of the predicted collision risk would be likely to act on this SPA and not the Solent and Southampton Water SPA (The applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)). The applicant confirmed at the Issue Specific Hearing on 4 December 2013, that this method of apportionment was based on proximity and foraging range. This collision risk would be of negligible magnitude that would not give rise to any likely significant effect. NE confirmed at the Issue Specific Hearing on 4 December 2013 that there is no likely significant effect on this species at this SPA.

- p. NE's response to 2Q.10 of Deadline IX (28 November 2013 (Doc Ref: REP-514)) states that NE agrees with the conclusions of the APEM modelling, and advises that there is no likelihood of significant adverse effects on migratory waterbirds.
- q. ES paragraph 11.9.10 (Doc Ref: APP-070) states that cumulative construction impacts would only occur if construction were to take place at the same time as other sites with overlapping potential impact zones. The only potential for such an effect at Rampion would be indirect cumulative effects on prey species (fish) if piling at Rampion and Navitus Bay were carried out at the same time, but currently (December 2013) it is not anticipated to occur given the proposed timetables for the two sites. (ES paragraph 11.9.10 (Doc Ref: APP-070)).

The applicant stated at the Issue Specific Hearing on 4 December 2013 that the likelihood of an overlap in piling activities is low and, owing to different delivery programmes, would comprise an overlap of unspecified duration but described by the applicant as 'short', at the end of the Rampion construction programme. The applicant stated that it has been in contact with the developer for Navitus Bay OWF and as a contingency plan where an overlap occurred the developers would maintain regular contact to coordinate piling activities so that piling would not occur concurrently. NE deferred to MMO on this matter, who confirmed that this would be an appropriate course of action if it could be enforced. The applicant subsequently proposed an option to monitor the overlap of piling activities through the submission of piling logs as required by the Marine Mammal Mitigation Protocol, to demonstrate that piling did occur concurrently.

- r. In-combination impacts on this feature were not specifically considered by the applicant. However, NE's written response to Deadline VIII (12 November 2013 (Doc Ref: REP-447)) states that NE is content with the ornithology scope of works, which includes assessment of cumulative impacts. At the Issue Specific Hearing on 4 December 2013, NE did not identify this site as one where they have outstanding concerns in relation to in combination effects.
- s. The applicant states that impacts during the decommissioning phase would be likely to be similar to and no greater than those during construction (ES paragraph 11.6.72 (Doc Ref: APP-070)).
- t. Common tern: The applicant has calculated cumulative annual collision totals of 26 applying a 98% avoidance rate, 13 applying a 99% rate and 6 applying 99.5%. Even taking the most precautionary 98% avoidance rate this would represent only a 0.1% increase over BDMP baseline mortality which would be a negligible magnitude cumulative effect. The project makes only a small contribution and does not materially affect the outcome of the cumulative assessment. (NSER Revision C paragraph 1.8.69-1.8.70 (Doc Ref: REP-480)). At the Issue Specific Hearing on 4 December 2013, NE did not identify this site as one where they have outstanding concerns in relation to in combination effects.
- u. The applicant's assessment considers effects on individual qualifying features and does not provide a separate assessment of effects on the wintering waterfowl assemblage. However, at the Issue Specific Hearing on 4 December

2013, NE stated that "NE's concerns in this case have been around SPAs that designate individual species of birds" and NE "are not presently concerned about impacts on assemblages".

NOTE: Appendix 14 of the applicant's written response to Deadline XI (SoCG – Not Agreed update. 10 December 2013 (Doc Ref: REP-564)) lists all of the sites and features for which there is agreement between NE and the applicant that there are no concerns of a likely significant effect; this list contains all of the features at the Chichester and Langstone Harbours SPA as listed in Matrix A.

SPA Stage 1 Matrix B: Portsmouth Harbour SPA and Ramsar

Site Code: SPA - UK 9011051, Ramsar - UK11055

Distance to project: 53km

European site features	Likely Effects of NSIP											
	Disturbance			Collision Risk			Barrier Effect			In-combination effects		
	C	O	D	C	O	D	C	O	D	C	O	D
Black-tailed godwit (<i>Limosa limosa islandica</i>) (SPA only over-winter)	x _a	x _a	x _{a, j}		x _a		x _a	x _a	x _{a, j}	x _i	x _i	x _{i, j}
Dark-bellied brent goose (<i>Branta bernicla bernicla</i>) (SPA & Ramsar = over-winter)	x _b	x _b	x _{b, j}		x _{c, h}		x _d	x _d	x _{d, j}	x _i	x _i	x _{i, j}
Dunlin (<i>Calidris alpina alpina</i>) (SPA only over-winter)	x _e	x _e	x _{e, j}		x _{f, h}		x _d	x _d	x _{d, j}	x _i	x _i	x _{i, j}
Red-breasted merganser (<i>Mergus serrator</i>) (SPA only over-winter)	x _e	x _e	x _{e, j}		x _g		x _d	x _d	x _{d, j}	x _i	x _i	x _{i, j}

Evidence

- a. Black-tailed godwit: Species not recorded during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)); therefore there is no pathway for disturbance, barrier effects or collision risk. Collision risk modelling not undertaken for the species. APEM Migropath modelling has not identified species as a potential migrant through the proposed wind farm (NSER Revision C Table 4 (Doc Ref: REP-480)).
- b. Dark-bellied brent goose: Species recorded within wind farm during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)). However, no habitat within potential disturbance zone (defined in paragraph 1.8.4 of NSER Revision C

(Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (NSER Revision C paragraph 1.8.23 (Doc Ref: REP-480)) and NSER Revision C Table 2 (Doc Ref: REP-480) indicates the species was only seen overflying the area on migration, not making use of its ecological resources. Species not considered at risk of disturbance.

- c. Dark-bellied brent goose: Species observed flying at rotor height during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)) and APEM Migropath modelling predicts species is likely to migrate through the wind farm site (NSER Revision C Table 4 (Doc Ref: REP-480)). At the 98% avoidance rate, collision modelling demonstrated 5.7 collisions per year resulting in a 0.3% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). When apportioning the predicted collision risk proportionately (between the Chichester and Langstone Harbours SPA, the Portsmouth Harbour SPA, the Solent Marshes and Southampton Water SPA, and the Pagham Harbour SPA) by the population size of this SPA (2,585 individuals), this gives a predicted collision risk of 0.7 collisions per year for this SPA which is considered to be of negligible magnitude and would not give rise to any likely significant effects (The applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)). Collision risk has not been presented in terms of percentage increase in baseline mortality.

APEM collision risk assessment update for migrant waterfowl (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)) has predicted 0.22 collisions in a 148 annual migrant estimation (the annual numbers of flights through the Rampion Wind Farm Site predicted by APEM Migropath (see NSER Revision C Table 4 (Doc Ref: REP-480)) at 98% avoidance rate which is considered negligible magnitude. (Note this has not been apportioned by European site).

- d. Given the extent of the offshore project and its orientation in relation to the main seabird migration route up/down the English Channel, a barrier effect would not result in either reduced utilisation of an ecological resource (through birds no longer being able to reach it through the barrier) or significantly increased energy expenditure by the birds in flying around the barrier (ES paragraphs 11.6.29-31 (Doc Ref: APP-070)).
- e. Species recorded in wider survey area during baseline surveys, but outside potential disturbance impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (ES Tables 11.6 and 11.12 (Doc Ref: APP-070)). However, no habitat within potential disturbance zone (NSER Revision C paragraphs 1.8.52 and 1.8.55 (Doc Ref: REP-480)). Species not considered at risk of disturbance.

NSER Revision C Table 2 (Doc Ref: REP-480) indicates dunlin was only seen overflying the area on migration, not making use of its ecological resources.

- f. Dunlin: No flights were observed within the collision risk zone and none at rotor height across the whole survey area (as such collision risk modelling was not undertaken for this species). However, APEM Migropath modelling predicts

species is likely to migrate through the wind farm site and predicts no likely significant collision risk at 98% avoidance rate with 0.16 (breeding and passage population) collisions in a 96 annual migrant estimation (the annual numbers of flights through the Rampion Wind Farm Site predicted by APEM Migropath (see NSER Revision C Table 4 (Doc Ref: REP-480)); this is considered negligible magnitude. (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)).

Collision risk has not been presented in terms of percentage increase in baseline mortality and has not been attributed to this specific European Site. However, NE has advised in its Written Representation of 15 August 2013 (Doc Ref: REP-297) that they are no longer concerned over impacts on this SPA.

- g. Red breasted merganser: Species recorded in wider survey area during baseline surveys, but outside potential disturbance impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (ES Table 11.16 (Doc Ref: APP-070)). No flights were observed within the collision risk zone and none at rotor height across the whole survey area (as such collision risk modelling was not undertaken for this species), therefore the risk would be negligible/low and would not result in a likely significant effect (NSER Revision C paragraph 1.8.52 (Doc Ref: REP-480)).

Further APEM collision risk modelling not undertaken for red-breasted merganser due to low numbers recorded in aerial survey data and as there are no known large aggregations of movements along the south coast from literature (Appendix 1 of Rule 17 Appendix 2 (Doc Ref: REP-442)).

- h. NE's response to 2Q.10 of Deadline IX (28 November 2013 (Doc Ref: REP-514)) states that NE agrees with the conclusions of the APEM modelling, and advises that there is no likelihood of significant adverse effects on migratory waterbirds.
- i. ES paragraph 11.9.10 (Doc Ref: APP-070) states that cumulative construction impacts would only occur if construction were to take place at same time as other sites with overlapping potential impact zones. The only potential for such an effect at Rampion would be indirect cumulative effects on prey species (fish) if piling at Rampion and Navitus Bay were carried out at the same time, but currently (December 2013) it is not anticipated to occur given the proposed timetables for the two sites.

The applicant stated at the Issue Specific Hearing on 4 December 2013 that the likelihood of an overlap in piling activities is low but, owing to different delivery programmes, if it were to occur this overlap (duration unspecified) at the end of the Rampion construction programme is described by the applicant as 'short'. The applicant stated that they have been in contact with the developer for Navitus Bay OWF and, as a contingency plan, if an overlap occurred the developers would maintain regular contact to coordinate piling activities such that piling would not occur concurrently. NE deferred to MMO on this matter, who confirmed that this would be an appropriate course of action if it could be enforced. The applicant subsequently proposed an option to monitor any potential overlap of piling

activities through the submission of piling logs, as required by the Marine Mammal Mitigation Protocol, to demonstrate that piling did not occur concurrently.

In-combination impacts on this feature were not specifically considered by the applicant. However, NE's written response to Deadline VIII (12 November 2013 (Doc Ref: REP-447)) states that NE is content with the ornithology scope of works, which includes assessment of cumulative impacts. At the Issue Specific Hearing on 4 December 2013, NE did not identify this site as one where they have outstanding concerns in relation to in combination effects.

- j. The applicant states that impacts during the decommissioning phase would be likely to be similar to and no greater than those during construction (ES paragraph 11.6.72 (Doc Ref: APP-070))

Note: NE has advised in its Written Representation of 15 August 2013 (Doc Ref: REP-297) that they are no longer concerned over impacts on this SPA. Appendix 14 of the applicant's written response to Deadline XI (SoCG – Not Agreed update. 10 December 2013 (Doc Ref: REP-564)) lists all of the sites and features for which there is agreement between NE and the applicant that there are no concerns of a likely significant effect; this list contains all of the features at the Portsmouth Harbour SPA as listed in Matrix B.

SPA Stage 1 Matrix C: Solent and Southampton Water SPA and Ramsar

Site Code: SPA - UK9011061, Ramsar - UK11063

Distance to project: 49km

European site features	Likely Effects of NSIP											
	Disturbance			Collision Risk			Barrier Effect			In-combination effects		
	C	O	D	C	O	D	C	O	D	C	O	D
Black-tailed godwit (<i>Limosa limosa islandica</i>) (SPA and Ramsar over-winter)	xa	xa	xa		xa		xa	xa	xa, u	xq, r, t	xr, t	xr, t, u
Common tern (<i>Sterna hirundo</i>) (SPA only breeding)	xb	xb	xb, u		xc, p		xd	xd	xd, u	xt	xs, t	xt, u
Dark-bellied brent goose (<i>Branta bernicla bernicla</i>) (SPA and Ramsar over-winter)	xe	xe	xe, u		xf, p		xd	xd	xd, u	xq, r, t	xr, t	xr, t, u
Eurasian teal (<i>Anas crecca</i>) (SPA and Ramsar over-winter)	xg	xg	xg, u		xh		xd	xd	xd, u	xq, r, t	xr, t	xr, t, u
Little tern (<i>Sterna albifrons</i>) (SPA only breeding)	xi	xi	xi, u		xj		xd	xd	xd, u	xq, r, t	xr, t	xr, t, u
Mediterranean gull (<i>Larus melanocephalus</i>) (SPA only)	xk	xk	xk, u		xl		xd	xd	xd, u	xq, r, t	xr, t	xr, t, u

<i>breeding)</i>												
Ringed plover (<i>Charadrius hiaticula</i>) (SPA over-winter and Ramsar spring/autumn)	x a	x a	x a		x a, p		x a	x a	x a, u	x q, r, t	x r, t	x r, t, u
Roseate tern (<i>Sterna dougallii</i>) (SPA only breeding)	x m	x m	x m		x m		x m	x m	x m, u	x m, t	x m, t	x m, t, u
Sandwich tern (<i>Sterna sandvicensis</i>) (SPA only breeding)	x n	x n	x n, u		x o		x d	x d	x d, u	x q, r, t	x r, t	x r, t, u
Wintering waterfowl assemblage (SPA and Ramsar)	x v	x v	x v		x v		x v	x v	x v	x v	x v	x v

Evidence

- a. Species not recorded during baseline surveys (ES Tables 11.6 and 11.12 (Doc Ref: APP-070) and NSER Revision C Table 2 (Doc Ref: REP-480)); therefore there is no pathway for disturbance, barrier effects or collision risk. Collision risk modelling not undertaken for the species.

APEM Migro-path modelling has not identified any of these species as potential migrants through the proposed wind farm with the exception of ringed plover (NSER Revision C Table 4 (Doc Ref: REP-480)).

APEM collision risk assessment update for migrant waterfowl (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)) predicted collision risk at 98% avoidance rate for ringed plover as 1.37 (breeding) and 2.39 (non-breeding) collisions of a 818 and 1420 annual migrant population estimations respectively. This has been assessed as being of a negligible magnitude impact. (Note this has not been apportioned by European site)

NE has not raised any concerns regarding these species.

- b. Common tern: The baseline surveys have shown some use of the survey area by this species (a peak population estimate of 40 was recorded within the project site and a peak of 172 within 4km), but the potential impact zone does not support any particular habitat that would be expected to be important to this species, being only a very small part of a much wider feeding area (NSER Revision C paragraph 1.8.34 (Doc Ref: REP-480)). The project site is located beyond the species mean maximum foraging range (15km), and the maximum foraging range (30km) from the European site (NSER Revision C paragraph 1.8.37 (Doc Ref: REP-480)), and there are no records of the species breeding at the Solent and Southampton Water SPA since 2004 (The applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)). Given this, any disturbance effect during construction and operation would be of negligible magnitude and would not result in any likely significant effect (NSER Revision C paragraph 1.8.34 (Doc Ref: REP-480)).
- c. Common tern: Whilst common tern are a qualifying feature of the Solent and Southampton Water SPA, there are no records of breeding at the SPA since 2004; therefore all of the predicted collision risk would likely act on the Chichester and Langstone Harbours SPA, Pagham Harbour SPA and the Dungeness to Pett Levels SPA and not to the Solent and Southampton Water. (The applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)).
- d. Given the extent of the offshore project and its orientation in relation to the main seabird migration route up/down the English Channel, a barrier effect would not result in either reduced utilisation of an ecological resource (through birds no longer being able to reach it through the barrier) or significantly increased energy expenditure by the birds in flying around the barrier (ES paragraph 11.6.29-31 (Doc Ref: APP-070)).
- e. Dark-bellied brent goose: Species recorded within wind farm during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)). However, no habitat within potential disturbance zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (NSER Revision C paragraph 1.8.7-1.8.8 (Doc Ref: REP-480)). NSER Revision C Table 2 (Doc Ref: REP-480) indicates species was only seen overflying the area on migration, not making use of its ecological resources. Species not considered at risk of disturbance.
- f. Dark-bellied brent goose: Species observed flying at rotor height during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)) and APEM Migropath modelling predicts species is likely to migrate through the wind farm site (NSER Revision C Table 4 (Doc Ref: REP-480)).

At the 98% avoidance rate, collision modelling demonstrated 5.7 collisions per year resulting in a 0.3% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). When apportioning the predicted collision risk proportionately (between the Chichester and Langstone Harbours SPA, the Portsmouth Harbour SPA, the Solent Marshes and Southampton Water SPA, and the Pagham

Harbour SPA) by the population size of this SPA (1,280 individuals), this gives a predicted collision risk of 0.3 collisions per year for this SPA which is considered to be of negligible magnitude and would not give rise to any likely significant effects (The applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)).

APEM collision risk assessment update for migrant waterfowl (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)) has predicted 0.22 collisions in a 148 annual migrant estimation (the annual numbers of flights through the Rampion Wind Farm Site predicted by APEM Migropath (see NSER Revision C Table 4 (Doc Ref: REP-480)) at 98% avoidance rate which is considered negligible magnitude. (Note this has not been apportioned by European site.)

- g. Eurasian teal: Species recorded in wider survey area during baseline surveys, but outside disturbance potential impact zone (NSER Revision C Table 2 (Doc Ref: REP-480)). However, no habitat within potential disturbance zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement), or any important flight routes that could be vulnerable to any barrier effect (NSER Revision C paragraph 1.8.5 (Doc Ref: REP-480)1). NSER Revision C Table 2 (Doc Ref: REP-480) indicates the species was only seen overflying the area on migration, not making use of its ecological resources. No concerns have been raised by either NE or RSPB.
- h. Eurasian teal: Species recorded in wider survey area during baseline surveys, but outside potential disturbance impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (NSER Revision C Table 2 (Doc Ref: REP-480)). APEM Migropath modelling has not identified this species as a potential migrant through the proposed wind farm (NSER Revision C Table 4 (Doc Ref: REP-480)). No flights observed within the collision risk zone and no flights at all were observed at rotor height across the whole survey area; collision risk would be very low and would not result in any likely significant effect (NSER Revision C paragraphs 1.8.51 and 1.8.56 (Doc Ref: REP-480)).
- i. Little tern: Species recorded in wider survey area during baseline surveys, but outside potential disturbance impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (NSER Revision C Table 2 (Doc Ref: REP-480)). Predominantly a coastal species, as found in the baseline surveys, and would not be expected to occur frequently as far out at sea as the wind farm would be located. The project site is beyond the species maximum foraging range (11km) from the European site. Disturbance risk and barrier effects to this species would therefore be negligible and would not result in any likely significant effect. (NSER Revision C paragraph 1.8.56 (Doc Ref: REP-480) and ES Table 11.5 (Doc Ref: APP-070)).
- j. Little tern: Species recorded in wider survey area during baseline surveys, but no flights observed within the collision risk zone (NSER Revision C Table 2 (Doc Ref: REP-480)). APEM Migropath modelling has not identified this species a potential migrant through the proposed wind farm (NSER Revision C Table 4 (Doc Ref: REP-480)). Collision risk would

be very low and would not result in any likely significant effect (NSER Revision C paragraphs 1.8.51, 1.8.52, 1.8.55 and 1.8.56 (Doc Ref: REP-480)).

- k. Mediterranean gull: Species recorded in disturbance zone and in collision zone (flying at rotor height) during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)). However, the peak population estimate within 4km of wind farm is only seven and the species was seen on only three of 30 surveys. As a result of the low numbers within the wind farm site any disturbance effects during construction and operation would be of negligible magnitude and would not result in any likely significant effect (NSER Revision C paragraph 1.8.24 (Doc Ref: REP-480) and ES Table 11.12).
- l. Mediterranean gull: Species recorded in disturbance zone and in collision zone (flying at rotor height) during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)). At the 98% avoidance rate, collision modelling demonstrated 1.7 collisions per year resulting in a 1.0% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)).

Over 200 pairs have been recorded at both this SPA and the Dungeness to Pett Levels SPA. The applicant states that the predicted 1.7 collisions per year would likely be shared approximately equally between the two SPAs given that they are similar distances (49km and 57km respectively) from the project site and have similar-sized populations (The applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)). The percentage increase in baseline mortality for this SPA has not been provided by the applicant.

Given the evidence from existing wind farms that have reported generally low numbers of gull collisions and the recommendation of Maclean et al (2009) to adopt a 99.5% avoidance rate for gulls, the collision risk to this species would be of negligible magnitude (0.4% increase) and not significant (NSER Revision C paragraph 1.8.24 (Doc Ref: REP-480)).

NE confirmed at the Issue Specific Hearing on 4 December 2013 that this species was part of the waterbird migration modelling and that NE is satisfied with the information provided to exclude a likely significant effect.

- m. Roseate tern: Species no longer considered to be breeding in European site (ES Table 11.5 (Doc Ref: APP-070)) and was not recorded as being present within the wind farm or wider survey area (NSER Revision C Table 2 (Doc Ref: REP-480)).
- n. Sandwich tern: Species recorded in wider survey area during baseline surveys, but outside potential disturbance impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (NSER Revision C Table 2 (Doc Ref: REP-480)). Recorded use of the potential impact zone relating to construction disturbance during the baseline surveys was very low; none were seen within the wind farm site, with a peak population estimate of 7 within 1km, and 20 within 4km.

The sandwich tern colonies in the European site are Hurst Point and North Solent which are 87km and 72km respectively away from the project site by the minimum sea route; these colonies are both beyond the species mean maximum foraging distance (49km) from the project site. In addition, the North Solent Colony has not been used since 2004 and is considered to be an alternative site used by the Hurst Point colony. (NSER Revision C paragraphs 1.8.39-1.8.40 (Doc Ref: REP-480)). As a result any disturbance effect during construction and operation would be of negligible magnitude and would not result in any likely significant effect.

The modelled noise contour maps (shown in ES Figures 8.5 – 8.10) indicate the extent of the zones over which there could be auditory damage to fish (>130dBht), strong avoidance by fish (90-130 dBht) and significant avoidance by fish (75-90dBht). The North Solent colony is 42km from the nearest point where the predicted noise exceeds 75dBht, therefore there is an overlap of the sandwich tern foraging range with the modelled potential noise impact zone. However, the North Solent colony has not been occupied since 2004, so any effect on these birds would be negligible and would not lead to any likely significant effect. The Hurst Point colony is 56km distant to the zone where the predicted noise exceeds 75dBht, this is beyond the foraging range for this species (49km) and therefore a significant effect is not likely. (NSER Revision C paragraphs 1.8.41-1.8.43 (Doc Ref: REP-480)).

NE's response to 2Q.23 of Deadline IX (28 November 2013 (Doc Ref: REP-514)) states that they do not agree the applicant has fully justified why the potential indirect impacts on sandwich tern at the site will not be significant. However, it does agree that the Hurst Spit colony is far enough away from the likely impact zone not to be affected, and the North Solent colony, having been deserted for nearly a decade, is not of immediate concern. NE concurs with the conclusion of no likely significant effect and does not consider it necessary for piling restrictions to mitigate for impacts on sandwich tern.

- o. Sandwich tern: Species recorded in wider survey area during baseline surveys, but outside potential impact zone, and seen overflying the area on migration, not making use of its ecological resources (NSER Revision C Table 2 (Doc Ref: REP-480)). APEM Migropath modelling has not identified this species as a potential migrant through the proposed wind farm (NSER Revision C Table 4 (Doc Ref: REP-480)). At the 98% avoidance rate, collision modelling demonstrated 0.5 collisions per year resulting in a 0.5% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). All of the predicted collision risk would be likely to act on the Chichester and Langstone Harbours SPA and not this SPA (ES Table 11.5 (Doc Ref: APP-070), NSER Revision C paragraph 1.8.39 (Doc Ref: REP-480) and the applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)). The applicant confirmed at the Issue Specific Hearing on 4 December 2013 that this method of attribution was on the basis of proximity and foraging range.
- p. NE's response to 2Q.10 of Deadline IX (28 November 2013 (Doc Ref: REP-514)) states that NE agrees with the conclusions of the APEM modelling, and advises that there is no likelihood of significant adverse effects on migratory waterbirds.

- q. ES paragraph 11.9.10 (Doc Ref: APP-070) states that cumulative construction impacts would only occur if construction were to take place at same time as other sites with overlapping potential impact zones. The only potential for such an effect at Rampion would be indirect cumulative effects on prey species (fish) if piling at Rampion and Navitus Bay were carried out at the same time, but currently (December 2013) it is not anticipated to occur given the proposed timetables for the two sites.

The applicant stated at the Issue Specific Hearing on 4 December 2013 that the likelihood of an overlap in piling activities is low but, owing to different delivery programmes, if it were to occur this overlap (duration unspecified) at the end of the Rampion construction programme is described by the applicant as 'short'. The applicant stated that they have been in contact with the developer for Navitus Bay OWF and, as a contingency plan, if an overlap occurred the developers would maintain regular contact to coordinate piling activities such that piling would not occur concurrently. NE deferred to MMO on this matter, who confirmed that this would be an appropriate course of action if it could be enforced. The applicant subsequently proposed an option to monitor any potential overlap of piling activities through the submission of piling logs, as required by the Marine Mammal Mitigation Protocol, to demonstrate that piling did not occur concurrently.

- r. In-combination impacts on this feature were not specifically considered by the applicant. However, NE's written response to Deadline VIII (12 November 2013 (Doc Ref: REP-447)) states that NE is content with the ornithology scope of works, which includes assessment of cumulative impacts.
- s. Common tern: The applicant has calculated cumulative annual collision totals of 26 applying a 98% avoidance rate, 13 applying a 99% rate and 6 applying 99.5%. Even taking the most precautionary 98% avoidance rate this would represent only a 0.1% increase at the BDMP level which would be a negligible magnitude cumulative effect. The project makes only a small contribution and does not materially affect the outcome of the cumulative assessment. (NSER Revision C paragraph 1.8.69-1.8.70 (Doc Ref: REP-480)).
- t. At the Issue Specific Hearing on 4 December 2013, NE did not identify this site as one where they have outstanding concerns in relation to in combination effects.
- u. The applicant states that impacts during the decommissioning phase would be likely to be similar to and no greater than those during construction (ES paragraph 11.6.72 (Doc Ref: APP-070)).
- v. The applicant's assessment considers effects on individual qualifying features and does not provide a separate assessment of effects on the wintering waterfowl assemblage. However, at the Issue Specific Hearing on 4 December 2013, NE stated that "NE's concerns in this case have been around SPAs that designate individual species of birds" and NE is "not presently concerned about impacts on assemblages".

NOTE: Appendix 14 of the applicant's written response to Deadline XI (SoCG – Not Agreed update. 10 December 2013 (Doc Ref: REP-564)) lists all of the sites and features for which there is agreement between NE and the applicant that there are no concerns of a likely significant effect; this list contains all of the features at the Solent and Southampton Water SPA as listed in Matrix C.

SPA Stage 1 Matrix D: Pagham Harbour SPA

Site Code: UK 9012041

Distance to project: 28km

European site features	Likely Effects of NSIP											
	Disturbance			Collision Risk			Barrier Effect			In-combination effects		
	C	O	D	C	O	D	C	O	D	C	O	D
Common tern (<i>Sterna hirundo</i>) ⁵	x _a	x _a	x _{a, m}		x _{b, i}		x _c	x _c	x _{c, m}	x _j	x _k	x _m
Dark-bellied brent goose (<i>Branta bernicla bernicla</i>) (over-winter)	x _d	x _d	x _{d, m}		x _{e, i}		x _c	x _c	x _{c, m}	x _{j, l}	x _l	x _{l, m}
Little tern (<i>Sterna albifrons</i>) (breeding)	x _f	x _f	x _{f, m}		x _g		x _{c, f}	x _{c, f}	x _{c, f, m}	x _{j, l}	x _l	x _{l, m}
Northern pintail (<i>Anas acut</i>) (over-winter)	x _h	x _h	x _h		x _h		x _h	x _h	x _{h, m}	x _{j, l}	x _l	x _{l, m}
Ruff (<i>Philomachus pugnax</i>) (over-winter)	x _h	x _h	x _h		x _h		x _h	x _h	x _{h, m}	x _{j, l}	x _l	x _{l, m}

Evidence

- a. Common tern: Species recorded within wind farm during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)). The potential impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area

⁵ Feature is a SPA citation species for Chichester and Langstone Harbours SPA and the Pagham Harbour SPA, but was not listed as a qualifying feature for either at the time of the SPA Review (E.on Written Response to Deadline II (15 August 2013): Appendix 9).

around the windfarm in which birds may be at risk of displacement) does not support any particular habitat that would be expected to be important to this species, and is only a very small part of a much wider feeding area (NSER Revision C paragraph 1.8.34 (Doc Ref: REP-480)). The project site is located beyond the species mean maximum foraging range (15km) from the European site (NSER Revision C paragraph 1.8.37 (Doc Ref: REP-480)). Given this, any disturbance effect during construction and operation would be of negligible magnitude and would not result in any likely significant effect (NSER Revision C paragraph 1.8.34 (Doc Ref: REP-480)).

- b. Common tern: Species observed flying at rotor height during baseline surveys (ES paragraph 11.5.13 (Doc Ref: APP-070)), APEM Migropath modelling predicts species is likely to migrate through the wind farm site (NSER Revision C Table 4 (Doc Ref: REP-480)), and Annex 1 of RSPB and SOS's Written Response to Deadline II (Doc Ref: REP-330) states that one of the spring migration lines of the species passes through the Solent.

At the 98% avoidance rate, collision modelling demonstrated 7.4 collisions per year, resulting in a 1.1% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). The seasonal breakdown of collisions is defined as: spring 7.2, breeding 0.1, autumn 0.1 and winter 0 (Task 22 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

When apportioning the predicted collision risk proportionately (between Chichester and Langstone Harbours SPA, Solent Marshes and Southampton Water SPA, Pagham Harbour SPA and the Dungeness to Pett Levels SPA) by the population size of this SPA (10 pairs), this gives a predicted collision risk of 0.3 collisions per year for this SPA which is considered to be of negligible magnitude and would not give rise to any likely significant effects (The applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)).

When considered against the BDMP (North Sea), the predicted annual collision risk would represent an increase of 0.04% over the existing baseline mortality, an effect of negligible magnitude that would not be significant. As the predicted mortality for the species at Rampion wind farm is below the 1% threshold, the magnitude of the collision risk to these species is considered negligible in the context of the BDMP population and no further population modelling has been carried out for this species (Task 23 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

APEM collision risk assessment update for migrant waterfowl (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)) has predicted 0.35 collisions in a 1580 annual migrant estimation (the annual numbers of flights through the Rampion Wind Farm Site predicted by APEM Migropath (see NSER Revision C Table 4 (Doc Ref: REP-480)) at 98% avoidance rate which is considered negligible magnitude. (Note this has not been apportioned by European site.)

The applicant considers this to be a precautionary assessment on the basis of recommendations by Maclean et al. (2009) of the use of an avoidance rate of 99% for terns (NSER Revision C paragraph 1.8.35 (Doc Ref: REP-480)).

- c. Given the extent of the offshore project and its orientation in relation to the main seabird migration route up/down the English Channel, a barrier effect would not result in either reduced utilisation of an ecological resource (through birds no longer being able to reach it through the barrier) or significantly increased energy expenditure by the birds in flying around the barrier (ES paragraph 11.6.29-31).
- d. Dark-bellied brent goose: Species recorded within wind farm during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)). However, no habitat within potential disturbance zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (NSER Revision C paragraph 1.8.7-1.8.8 (Doc Ref: REP-480)). NSER Revision C Table 2 (Doc Ref: REP-480) indicates dark-bellied brent goose was only seen overflying the area on migration, not making use of its ecological resources. Species not considered at risk of disturbance.
- e. Dark-bellied brent goose: Species observed flying at rotor height during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)) and APEM Migropath modelling predicts species is likely to migrate through the wind farm site (NSER Revision C Table 4 (Doc Ref: REP-480)). At the 98% avoidance rate, collision modelling demonstrated 5.7 collisions per year resulting in a 0.3% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)).

When apportioning the predicted collision risk proportionately (between the Chichester and Langstone Harbours SPA, the Portsmouth Harbour SPA, the Solent Marshes and Southampton Water SPA, and the Pagham Harbour SPA) by the population size of this SPA (2,615 individuals), this gives a predicted collision risk of 0.7 collisions per year for this SPA which is considered to be of negligible magnitude and would not give rise to any likely significant effects (The applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)).

APEM collision risk assessment update for migrant waterfowl (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)) has predicted 0.22 collisions in a 148 annual migrant estimation (the annual numbers of flights through the Rampion Wind Farm Site predicted by APEM Migropath (see NSER Revision C Table 4 (Doc Ref: REP-480)) at 98% avoidance rate which is considered negligible magnitude. (Note this has not been apportioned by European site.)

- f. Little tern: Species recorded in wider survey area during baseline surveys, but outside potential disturbance impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (NSER Revision C Table 2 (Doc Ref: REP-480)). Predominantly a coastal species, as found in the baseline surveys, and would not be expected to occur frequently as far out at sea as the wind farm would be located. The project site is beyond the species maximum foraging range (11km) from the European site. Disturbance risk and barrier effects to this species would therefore be negligible and would not result in any likely significant effect. (NSER Revision C paragraph 1.8.56 (Doc Ref: REP-480) and ES Table 11.5 (Doc Ref: APP-070)).

- g. Little tern: Species recorded in wider survey area during baseline surveys, but outside potential disturbance impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (NSER Revision C Table 2 (Doc Ref: REP-480)). No flights observed within the collision risk zone and no flights at all were observed at rotor height across the whole survey area. APEM Migropath modelling has not identified this species as a potential migrant through the proposed wind farm (NSER Revision C Table 4 (Doc Ref: REP-480)). Collision risk would be very low and would not result in any likely significant effect (NSER Revision C paragraph 1.8.56 (Doc Ref: REP-480)).
- h. Species not recorded during baseline surveys (ES Tables 11.6 and 11.12 (Doc Ref: APP-070) and NSER Revision C Table 2 (Doc Ref: REP-480)); therefore there is no pathway for disturbance, barrier effects or collision risk. Collision risk modelling not undertaken for the species. APEM Migropath modelling has not identified species as a potential migrant through the proposed wind farm (NSER Revision C Table 4 (Doc Ref: REP-480)).
- i. NE's response to 2Q.10 of Deadline IX (28 November 2013 (Doc Ref: REP-514)) states that NE agrees with the conclusions of the APEM modelling, and advises that there is no likelihood of significant adverse effects on migratory waterbirds.
- j. ES paragraph 11.9.10 (Doc Ref: APP-070) states that cumulative construction impacts would only occur if construction were to take place at same time as other sites with overlapping potential impact zones. The only potential for such an effect at Rampion would be indirect cumulative effects on prey species (fish) if piling at Rampion and Navitus Bay were carried out at the same time, but currently (December 2013) it is not anticipated to occur given the proposed timetables for the two sites.

The applicant stated at the Issue Specific Hearing on 4 December 2013 that the likelihood of an overlap in piling activities is low but, owing to different delivery programmes, if it were to occur this overlap (duration unspecified) at the end of the Rampion construction programme is described by the applicant as 'short'. The applicant stated that they have been in contact with the developer for Navitus Bay OWF and, as a contingency plan, if an overlap occurred the developers would maintain regular contact to coordinate piling activities such that piling would not occur concurrently. NE deferred to MMO on this matter, who confirmed that this would be an appropriate course of action if it could be enforced. The applicant subsequently proposed an option to monitor any potential overlap of piling activities through the submission of piling logs, as required by the Marine Mammal Mitigation Protocol, to demonstrate that piling did not occur concurrently.

- k. Common tern: The applicant has calculated cumulative annual collision totals of 26 applying a 98% avoidance rate, 13 applying a 99% rate and 6 applying 99.5%. Even taking the most precautionary 98% avoidance rate this would represent only a 0.1% increase which would be a negligible magnitude cumulative effect. The project makes only a

small contribution and does not materially affect the outcome of the cumulative assessment. (NSER Revision C paragraph 1.8.69-1.8.70 (Doc Ref: REP-480)).

Cumulative collision risk has not been specifically attributed to this European Site, however NE has advised in its Written Representations of 15 August 2013 (Doc Ref: REP-297) that they are no longer concerned over impacts on this SPA.

- I. In-combination impacts on this feature were not specifically considered by the applicant. However, NE's written response to Deadline VIII (12 November 2013 (Doc Ref: REP-447)) states that NE is content with the ornithology scope of works, which includes assessment of cumulative impacts. At the Issue Specific Hearing on 4 December 2013, NE did not identify this site as one where they have outstanding concerns in relation to in combination effects.
- m. The applicant states that impacts during the decommissioning phase would be likely to be similar to and no greater than those during construction (ES paragraph 11.6.72 (Doc Ref: APP-070)).

Note: NE has advised in its Written Representations of 15 August 2013 (Doc Ref: REP-297) that they are no longer concerned over impacts on this SPA. This was reconfirmed by NE at the Issue Specific Hearing on 4 December 2013 (see note I above) and in Appendix 14 of the applicant's written response to Deadline XI (SoCG – Not Agreed update. 10 December 2013 (Doc Ref: REP-564)) which lists all of the sites and features for which there is agreement between NE and the applicant that there are no concerns of a likely significant effect; this list contains all of the features at the Pagham Harbour SPA as listed in Matrix D.

SPA Stage 1 Matrix E: Dungeness to Pett Levels SPA

Site Code: UK9012091

Distance to project: 57Km

European site features	Likely Effects of NSIP											
	Disturbance			Collision Risk			Barrier Effect			In-combination effects		
	C	O	D	C	O	D	C	O	D	C	O	D
Aquatic warbler (<i>Acrocephalus paludicola</i>) (on passage)	xa	xa	xa		xa		xa	xa	xa	xi, j	xj	xj, l
Bewick's swan (<i>Cygnus columbianus bewickii</i>) (over-winter)	xa	xa	xa		xa		xa	xa	xa	xi, j	xj	xj, l
Common tern (<i>Sterna hirundo</i>) (breeding)	xb	xb	xb, l		xc		xd	xd	xd, l	xi	xk	xl
Little tern (<i>Sterna albifrons</i>) (breeding)	xe	xe	xe, l		xf		xd, e	xd, e	xd, e, l	xi, j	xj	xj, l
Mediterranean gull (<i>Larus melanocephalus</i>) (breeding)	xg	xg	xg, l		xh		xd	xd	xd, l	xi, j	xj	xj, l
Northern shoveler (<i>Anas clypeata</i>) (over-winter)	xa	xa	xa		xa		xa	xa	xa	xi, j	xj	xj, l

Evidence

- a. Species not recorded during baseline surveys (ES Tables 11.6 and 11.12 (Doc Ref: APP-070) and NSER Revision C Table 2 (Doc Ref: REP-480)); therefore there is no pathway for disturbance, barrier effects or collision risk. Collision risk modelling not undertaken for the species. APEM Migropath modelling has not identified species as a potential migrant through the proposed wind farm (NSER Revision C Table 4 (Doc Ref: REP-480)).
- b. Common tern: The baseline surveys have shown some use of the survey area by this species (a peak population estimate of 40 was recorded within the project site and a peak of 172 within 4km), but the potential impact zone does not support any particular habitat that would be expected to be important to this species, being only a very small part of a much wider feeding area (NSER Revision C paragraph 1.8.34 (Doc Ref: REP-480)). The project site is located beyond the species mean maximum foraging range (15km), and the maximum foraging range (30km) from the European site (NSER Revision C paragraph 1.8.37 (Doc Ref: REP-480)). Given this, any disturbance effect during construction and operation would be of negligible magnitude and would not result in any likely significant effect (NSER Revision C paragraph 1.8.34 (Doc Ref: REP-480)).

NE and RSPB have raised concern over the possible adverse effects on fish stocks used for feeding by terns from this SPA. The modelled noise contour maps (shown in ES Figures 8.5 – 8.10) indicate the extent of the zones over which there could be auditory damage to fish (>130dBht), strong avoidance by fish (90-130 dBht) and significant avoidance by fish (75-90dBht). NSER Revision C paragraph 1.8.37 (Doc Ref: REP-480) states that the closest that the predicted 75dBht zone comes to the nearest tern colony within the SPA is 25km (to the Rye Harbour colony; the second main colony at Burrowes Pit is 28km from that zone). There would be a small overlap between the maximum species foraging range (30km) for both colonies and this zone, but the zone lies outside the species mean maximum range (15km), therefore only a small part of the foraging range would overlap with the 75dBht zone and any effects on this SPA population would be of negligible magnitude and not significant. Any additional indirect effects on herring spawning outside this foraging range and on recruitment to the wider herring population would be mitigated by restrictions to piling activity during peak spawning season.

- c. Common tern: Species observed flying at rotor height during baseline surveys (ES paragraph 11.5.13 (Doc Ref: APP-070)), APEM Migropath modelling predicts species is likely to migrate through the wind farm site (NSER Revision C Table 4 (Doc Ref: REP-480)), and Annex 1 of RSPB and SOS's Written Response to Deadline II (Doc Ref: REP-330) states that one of the spring migration lines of the species passes through the Solent.

At the 98% avoidance rate, collision modelling demonstrated 7.4 collisions per year resulting in a 1.1% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). When apportioning the predicted collision risk proportionately (between Chichester and Langstone Harbours SPA, Solent Marshes and Southampton Water SPA, Pagham Harbour SPA and the Dungeness to Pett Levels

SPA) by the population size of this SPA (266 pairs), this gives a predicted collision risk of 4.6 collisions per year for this SPA which is considered to be of negligible magnitude and would not give rise to any likely significant effects (The applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)).

The applicant considers this to be a precautionary assessment on the basis of recommendations by Maclean et al. (2009) of the use of an avoidance rate of 99% for terns (NSER Revision C paragraph 1.8.35 (Doc Ref: REP-480)). The seasonal breakdown of collisions is defined as: spring 7.2, breeding 0.1, autumn 0.1 and winter 0 (Task 22 of Ornithology Work to address NE's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

When considered against the BDMP (North Sea), the predicted annual collision risk would represent an increase of 0.04% over the existing baseline mortality, an effect of negligible magnitude that would not be significant. As the predicted mortality for the species at Rampion wind farm is below the 1% threshold, the magnitude of the collision risk to these species is considered negligible in the context of the BDMP population and no further population modelling has been carried out for this species (Task 23 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

APEM collision risk assessment update for migrant waterfowl (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)) has predicted 0.35 collisions in a 1580 annual migrant estimation (the annual numbers of flights through the Rampion Wind Farm Site predicted by APEM Migropath (see NSER Revision C Table 4 (Doc Ref: REP-480)) at 98% avoidance rate which is considered negligible magnitude. (Note this has not been apportioned by European site.) NE's response to 2Q.10 of Deadline IX (28 November 2013 (Doc Ref: REP-514)) states that NE agrees with the conclusions of the APEM modelling, and advises that there is no likelihood of significant adverse effects on migratory waterbirds.

- d. Given the extent of the offshore project and its orientation in relation to the main seabird migration route up/down the English Channel, a barrier effect would not result in either reduced utilisation of an ecological resource (through birds no longer being able to reach it through the barrier) or significantly increased energy expenditure by the birds in flying around the barrier (ES paragraph 11.6.29-31).
- e. Little tern: Species recorded in wider survey area during baseline surveys, but outside potential disturbance impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (NSER Revision C Table 2 (Doc Ref: REP-480)). Predominantly a coastal species, as found in the baseline surveys, and would not be expected to occur frequently as far out at sea as the wind farm would be located. The project site is beyond the species maximum foraging range (11km) from the European site. Disturbance risk and barrier effects to this species would therefore be negligible and would not result in any likely significant effect. (NSER Revision C paragraph 1.8.56 (Doc Ref: REP-480) and ES Table 11.5 (Doc Ref: APP-070)).

There is no overlap between the maximum little tern foraging range from this SPA (11km) and the predicted 75dBht zone (in which there could be significant displacement of herring); therefore there would be no adverse effects on fish stocks used for feeding by the species from this SPA (NSER Revision C paragraph 1.8.37 (Doc Ref: REP-480)).

- f. Little tern: Species recorded in wider survey area during baseline surveys, but outside potential disturbance impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (NSER Revision C Table 2 (Doc Ref: REP-480)). No flights observed within the collision risk zone and no flights at all were observed at rotor height across the whole survey area and APEM Migropath modelling has not identified this species as a potential migrant through the proposed wind farm (NSER Revision C Table 4 (Doc Ref: REP-480)). Collision risk would be very low and would not result in any likely significant effect (NSER Revision C paragraph 1.8.56 (Doc Ref: REP-480)).
- g. Mediterranean gull: Species recorded in disturbance zone and in collision zone (flying at rotor height) during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)). However, the peak population estimate within 4km of wind farm is only seven and the species was seen on only three of 30 surveys. As a result of the low numbers within the wind farm site any disturbance effects during construction and operation would be of negligible magnitude and would not result in any likely significant effect (NSER Revision C paragraph 1.8.24 (Doc Ref: REP-480) and ES Table 11.12).
- h. Mediterranean gull: Species recorded in disturbance zone and in collision zone (flying at rotor height) during baseline surveys (NSER Revision C Table 2 (Doc Ref: REP-480)). At the 98% avoidance rate, collision modelling demonstrated 1.7 collisions per year resulting in a 1.0% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)).

Over 200 pairs have been recorded at both this SPA and the Solent and Southampton Water SPA. The applicant states that the predicted 1.7 collisions per year would likely be shared approximately equally between the two SPAs given that they are similar distances (57km and 49km respectively) from the project site and have similar-sized populations (The applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)). The percentage increase in baseline mortality for this SPA has not been provided by the applicant, however NE has advised in its Written Representation of 15 August 2013 (Doc Ref: REP-297) that they are no longer concerned over impacts on this SPA.

Given the evidence from existing wind farms that have reported generally low numbers of gull collisions and the recommendation of Maclean et al (2009) to adopt a 99.5% avoidance rate for gulls, the collision risk to this species would be of negligible magnitude (0.4% increase) and not significant (NSER Revision C paragraph 1.8.24 (Doc Ref: REP-480)).

NE confirmed at the Issue Specific Hearing on 4 December 2013 that this species was part of the waterbird migration modelling and that NE is satisfied with the information provided. A likely significant effect can therefore be excluded.

- i. ES paragraph 11.9.10 (Doc Ref: APP-070) states that cumulative construction impacts would only occur if construction were to take place at same time as other sites with overlapping potential impact zones. The only potential for such an effect at Rampion would be indirect cumulative effects on prey species (fish) if piling at Rampion and Navitus Bay were carried out at the same time, but currently (December 2013) it is not anticipated to occur given the proposed timetables for the two sites.

The applicant stated at the Issue Specific Hearing on 4 December 2013 that the likelihood of an overlap in piling activities is low but, owing to different delivery programmes, if it were to occur this overlap (duration unspecified) at the end of the Rampion construction programme is described by the applicant as 'short'. The applicant stated that they have been in contact with the developer for Navitus Bay OWF and, as a contingency plan, if an overlap occurred the developers would maintain regular contact to coordinate piling activities such that piling would not occur concurrently. NE deferred to MMO on this matter, who confirmed that this would be an appropriate course of action if it could be enforced. The applicant subsequently proposed an option to monitor any potential overlap of piling activities through the submission of piling logs, as required by the Marine Mammal Mitigation Protocol, to demonstrate that piling did not occur concurrently.

- j. In-combination impacts on this feature were not specifically considered by the applicant. However, NE's written response to Deadline VIII (12 November 2013 (Doc Ref: REP-447)) states that NE is content with the ornithology scope of works, which includes assessment of cumulative impacts.
- k. Common tern: The applicant has calculated cumulative annual collision totals of 26 applying a 98% avoidance rate, 13 applying a 99% rate and 6 applying 99.5%. Even taking the most precautionary 98% avoidance rate this would represent only a 0.1% increase which would be a negligible magnitude cumulative effect. The project makes only a small contribution and does not materially affect the outcome of the cumulative assessment. (NSER Revision C paragraph 1.8.69-1.8.70 (Doc Ref: REP-480)).
- l. The applicant states that impacts during the decommissioning phase would be likely to be similar to and no greater than those during construction (ES paragraph 11.6.72 (Doc Ref: APP-070)).

Note: NE has advised in its Written Representation of 15 August 2013 (Doc Ref: REP-297) that they are no longer concerned over impacts on this SPA. Appendix 14 of the applicant's written response to Deadline XI (SoCG – Not Agreed update. 10 December 2013 (Doc Ref: REP-564)) also lists all of the sites and features for which there is agreement between NE and the applicant that there are no concerns of a likely significant effect; this list contains all of the features at the Dungeness to Pett Levels SPA as listed in Matrix E.

SPA Stage 1 Matrix F: Alderney West Coast and the Burhou Islands Ramsar site

Site Code: UK22002

Distance to project: 180km

European site features	Likely Effects of NSIP											
	Disturbance			Collision Risk			Barrier Effect			In-combination effects		
	C	O	D	C	O	D	C	O	D	C	O	D
Atlantic puffin (<i>Fratercula arctica</i>) (nesting)	xa	xa	xa, o		xa		xa	xa	xa, o	xj, k, n	xk, n	xk, n, o
European storm-petrel (<i>Hydrobates pelagicus</i>) (nesting)	xb	xb	xb, o		xb		xb	xb	xb, o	xj, k, n	xk, n	xk, n, o
Great black-backed gull (<i>Larus marinus</i>) (nesting)	xc	xc	xc, o		xd		xe	xe	xe, o	xj, n	xl, n	xn, o
Lesser black-backed gull (<i>Larus fuscus</i>) (nesting)	xf	xf	xf, o		xg		xe	xe	xe, o	xj, n	xm, n	xn, o
Northern gannet (<i>Morus Bassanus</i>) (nesting and breeding)	xh	xh	xh, o		xi		xe	xe	xe, o	xj, n	✓n	xn, o

Evidence

- a. Atlantic puffin: Species recorded within wind farm during baseline surveys with the peak count of 13 within the disturbance zone (ES Table 11.12). The project site is located beyond the species mean maximum foraging range (105km) but within the maximum foraging range (200km) from the European site (NSER Revision C Table 1 (Doc Ref: REP-480)) and the APEM Migropath modelling has not identified the species as likely to pass through the project site on migration (NSER Revision C Table 4 (Doc Ref: REP-480)). No assessment of impacts on the species provided by the applicant; however no concerns have been raised by either NE or RSPB.

- b. European storm-petrel: Species recorded in wider survey (4km buffer zone) area during baseline surveys (ES Table 11.12) with the peak count of 27 within the disturbance zone (ES Table 11.12). The species is not identified as a species exceeding 100km foraging range (NSER Revision C Table 1 (Doc Ref: REP-480)) and the European site is located 180 km from the project site. No further assessment on the species provided by the applicant, however no concerns have been raised by either NE or RSPB.
- c. Great black-backed gull: Species recorded within wind farm during baseline surveys (ES Table 11.8 – Table 11.12). The species was widespread across all of the survey area, with no evidence of any particular preference of the potential disturbance zone. Given that it has such a wide foraging range, the temporary loss of a small part of the foraging range would be of negligible magnitude and not significant (ES paragraphs 11.6.23 and 11.6.43).
- d. Great black-backed gull: Species observed flying at rotor height through the wind farm during baseline surveys (ES paragraph 11.5.13 (Doc Ref: APP-070)). At the 98% avoidance rate, collision modelling demonstrated 103.9 collisions per year resulting in a 4.9% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). The seasonal breakdown of collisions is defined as: spring 42.8, breeding 6.8, autumn 29.0 and winter 25.3 (Task 18 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

When considered against the BDMP (North Sea), the predicted annual collision risk would represent an increase of 0.6% over the existing baseline mortality, an effect of negligible magnitude that would not be significant. As the predicted great black-backed gull mortality for the Rampion wind farm is below the 1% threshold (it was 0.6% even applying a precautionary 98% avoidance rate against the North Sea population), no further population modelling has been carried out for this species (Natural England's written representations relating to marine ornithology, paragraph 76).

As the predicted mortality for the species at Rampion wind farm is below the 1% threshold, the magnitude of the collision risk to these species is considered negligible in the context of the BDMP population and no further population modelling has been carried out for this species (Task 19 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

Collision risk has not been apportioned to the European site.

This species has not been identified as a species with a foraging range exceeding 100km (NSER Revision C Table 1 (Doc Ref: REP-480)) and the European site is located 180 km from the project site. The APEM Migro-path modelling has not identified the species as likely to pass through the project site on migration (NSER Revision C Table 4 (Doc Ref: REP-480)). NE has not raised any concerns regarding migratory routes for this species from this European site.

- e. Given the extent of the offshore project and its orientation in relation to the main seabird migration route up/down the English Channel, a barrier effect would not result in either reduced utilisation of an ecological resource (through birds no longer being able to reach it through the barrier) or significantly increased energy expenditure by the birds in flying around the barrier (ES paragraph 11.6.29-31).
- f. Lesser black-backed gull: Species recorded within wind farm during baseline surveys (ES Table 11.8-Table 11.12). The project site is located beyond the species mean maximum foraging range (141km) from the European site but on the fringe of the maximum recorded range (181km). As such, it is considered unlikely that the site would be regularly used by the Ramsar population and no likely significant effect would occur (NSER Revision C paragraph 1.6.2 (Doc Ref: REP-480)).
- g. Lesser black-backed gull: Species observed flying at rotor height through the wind farm during baseline surveys (ES paragraph 11.5.13 (Doc Ref: APP-070)). At the 98% avoidance rate, collision modelling demonstrated 31.4 collisions per year resulting in a 9.0% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). The seasonal breakdown of collisions is defined as: spring 3.6, breeding 11.5, autumn 8.8 and winter 7.6 (Task 11 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

When considered against the BDMP (North Sea), the predicted annual collision risk would represent an increase of 0.1% over the existing baseline mortality, an effect of negligible magnitude that would not be significant. As the predicted mortality for the species at Rampion wind farm is below the 1% threshold, the magnitude of the collision risk to these species is considered negligible in the context of the BDMP population and no further population modelling has been carried out for this species (Task 14 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

Collision risk mortality has not been apportioned to this European site. The project site is located beyond the species mean maximum foraging range (141km) from the European site. NE has not raised the potential for a link of non-breeding birds between the project site and this European site (NSER Revision C paragraph 1.8.5 (Doc Ref: REP-480)).

- h. Northern gannet: Species recorded within wind farm during baseline surveys (ES Table 11.12). The project site is located within the species mean maximum foraging range (229km) from the European site and Annex C of NE's Written Response to Deadline II (paragraph 2.3.1) states that there is the likelihood that a proportion of the birds observed during baseline surveys originate from the Ramsar site.

The project site plus a 4km buffer would occupy 0.5% of the feeding range from the European site. The potential impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) held densities slightly lower than the study area as a whole, with no indication that any part of that zone was of particular importance to this species. Given this, and that the northern

gannet has such a wide foraging range, the temporary loss of a part of that range is assessed by the applicant to be of negligible magnitude and not significant (NSER Revision C paragraph 1.8.13 (Doc Ref: REP-480)).

Studies have shown reductions in gannet numbers within wind farms post-construction reported in several studies, with displacement within wind farms (though not in any buffer zone around them) exceeding 90% in some cases. Therefore applying a displacement model for this species that assumes full displacement within the wind farm, but not extending into any of surrounding area would seem a more reasonable approach. In that case peak of 1,087 Gannets would be predicted to be displaced at Rampion, an effect of negligible magnitude that would not be significant (NSER Revision C paragraph 1.8.13 (Doc Ref: REP-480)).

- i. Northern gannet: Species recorded in collision zone (flying at rotor height) during baseline surveys (ES Tables 11.1 and 11.9 (Doc Ref: APP-070)). At the 98% avoidance rate, collision modelling demonstrated 184.8 collisions per year resulting in a 5.1% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). The seasonal breakdown of collisions is defined as: spring 10.9, breeding 56.3, autumn 81.2 and winter 36.4 (Task 1 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

When considered against the BDMP (North Sea), the predicted annual collision risk would represent an increase of 0.4% over the existing baseline mortality, an effect of negligible magnitude that would not be significant (Task 1 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

As the predicted mortality for the species at Rampion wind farm is below the 1% threshold, the magnitude of the collision risk to these species is considered negligible in the context of the BDMP population and no further population modelling has been carried out for this species (Task 5 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

RSPB and SOS accept that the increase over baseline mortality of 0.4% is not significant (RSPB and SOS response to deadline IX (Doc Ref: REP-517)).

A precautionary worst case assumption has been adopted that all of the predicted breeding season mortality would be apportioned to this site. The collision risk to breeding gannets was assessed as medium magnitude applying a 98% avoidance rate with a predicted mortality of 56 breeding birds at the 98% avoidance rate, representing a 1.2% increase over baseline mortality (population estimate at this Ramsar site is 7,409 pairs).

The applicant considers the actual risk would be lower as a 99.5% avoidance rate has been recommended for gannet in Maclean et al. (2009), which would reduce the collision risk 4-fold resulting in a low magnitude effect at the regional level. Furthermore, gannets using the project site during the nominal 'breeding' season are likely to include a

substantial number of migrant and non-breeding birds, so the predicted mortality of 56 during this period is likely to over-estimate the actual numbers affected from this Ramsar site. In addition, the macro avoidance behaviour of gannets at existing wind farms would further reduce the collision risk, and a WWT Consulting report to the Crown Estate on the population viability analysis for gannets has shown the population to be robust to additional mortality and hence it would be unlikely that even the highly precautionary level of additional mortality would have any significant population consequences. Collision risk is therefore not considered by the applicant to result in a likely significant effect on the Ramsar breeding population. (NSER Revision C paragraphs 1.8.14-1.8.17 (Doc Ref: REP-480))

The applicant has indicated that it is unlikely the Ramsar population would be affected by mortality outside breeding season as gannet migration would likely be primarily to the south and west, away from the Rampion site. (NSER Revision C paragraphs 1.8.14-1.8.18 (Doc Ref: REP-480)).

- j. ES paragraph 11.9.10 (Doc Ref: APP-070) states that cumulative construction impacts would only occur if construction were to take place at same time as other sites with overlapping potential impact zones. The only potential for such an effect at Rampion would be indirect cumulative effects on prey species (fish) if piling at Rampion and Navitus Bay were carried out at the same time, but currently (December 2013) it is not anticipated to occur given the proposed timetables for the two sites.

The applicant stated at the Issue Specific Hearing on 4 December 2013 that the likelihood of an overlap in piling activities is low but, owing to different delivery programmes, if it were to occur this overlap (duration unspecified) at the end of the Rampion construction programme is described by the applicant as 'short'. The applicant stated that they have been in contact with the developer for Navitus Bay OWF and, as a contingency plan, if an overlap occurred the developers would maintain regular contact to coordinate piling activities such that piling would not occur concurrently. NE deferred to MMO on this matter, who confirmed that this would be an appropriate course of action if it could be enforced. The applicant subsequently proposed an option to monitor any potential overlap of piling activities through the submission of piling logs, as required by the Marine Mammal Mitigation Protocol, to demonstrate that piling did not occur concurrently.

- k. In-combination impacts on this feature were not specifically considered by the applicant. However, NE's written response to Deadline VIII (12 November 2013 (Doc Ref: REP-447)) states that NE is content with the ornithology scope of works, which includes assessment of cumulative impacts.
- l. Great black-backed gulls: The applicant has calculated cumulative annual collision totals of 2,081 applying a 98% avoidance rate, 1,041 applying a 99% rate and 520 applying 99.5%. These represent a 12.4%, 6.2% and 3.1% (NSER Revision C Table 6 (Doc Ref: REP-480)). However, the project makes a small contribution and does not materially affect the outcome of the cumulative assessment (e.g. at a 98% avoidance rate, the cumulative impact would be equivalent to a 12.4% increase over the baseline mortality including the project and 11.7% without it). The applicant

states that these values suggest a medium/low magnitude cumulative effect would be possible on the North Sea population overall, which the applicant states could be potentially significant. (Task 20 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)). Cumulative collision risk has not been apportioned to individual European sites.

- m. Lesser black-backed gulls: The applicant has calculated cumulative annual collision totals of 1,968 applying a 98% avoidance rate, 984 applying a 99% rate and 492 applying 99.5%. These represent a 17.5%, 8.7% and 4.4% increase over the baseline mortality respectively (taking the same North Sea baseline). These values suggest a medium/low magnitude cumulative effect would be possible on the North Sea population overall, which could be potentially significant. However, the applicant states that the project makes a small contribution and does not materially affect the outcome of the cumulative assessment (e.g. at a 98% avoidance rate, the cumulative impact would be equivalent to a 17.5% increase over the baseline mortality including the project and 17.2% without it). (NSER Revision C Table 6 and paragraphs 1.8.67-1.8.68 (Doc Ref: REP-480)).

Cumulative collision risk has not been apportioned to individual European sites.

- n. At the Issue Specific Hearing on 4 December 2013, NE stated that their only outstanding concern in relation to in-combination effects at this site is in respect of collision risk for gannet and, in the absence of an assessment apportioning in-combination effects to this site, a significant effect cannot be excluded and an appropriate assessment is likely to be required.
- o. The applicant states that impacts during the decommissioning phase would be likely to be similar to and no greater than those during construction (ES paragraph 11.6.72 (Doc Ref: APP-070))

Note: NE state it is beyond its remit to comment on implications for designated sites within other EC member states jurisdiction (NE's Written Response to Deadline II, Annex C, paragraph 2.3.2(Doc Ref: REP-327)). Appendix 2 of NE's response to Deadline VIII (Doc Ref: REP-447) contains a clarification note on the legal status of Guernsey and associated protected sites which explains that the Environment Department of Guernsey is the lead contact in relation to the site. The ExA wrote on 22 November 2013 to the Environment Department of Guernsey inviting them to become involved in the examination should it wish to do so (Doc Ref: PD-020). To date (13 December 2013), no response has been received.

Appendix 14 of the applicant's written response to Deadline XI (SoCG – Not Agreed update. 10 December 2013 (Doc Ref: REP-564)) lists all of the sites and features for which there are continuing concerns and could not be included in the no likely significant effects list until NE had seen the additional information being provided by the applicant; this list contains breeding gannets at Alderney West Coast and the Burhou Islands Ramsar site.

SPA Stage 1 Matrix G: Forth Islands SPA

Site Code: UK9004171

Distance to project: 609km

European site features	Likely Effects of NSIP											
	Disturbance			Collision Risk			Barrier Effect			In-combination effects		
	C	O	D	C	O	D	C	O	D	C	O	D
Atlantic puffin (<i>Fratercula arctica</i>) (breeding)	x _a	x _a	x _{a, r}		x _b		x _a	x _a	x _{a, r}	x _{p, q, y}	x _{q, y}	x _{q, r, y}
Arctic tern (<i>Sterna paradisaea</i>) (breeding)	x _a	x _a	x _{a, r}		x _{c, d, e}		x _a	x _a	x _{a, r}	x _{p, y}	x _{s, y}	x _y
Common tern (<i>Sterna hirundo</i>) (breeding)	x _a	x _a	x _{a, r}		x _{c, e, f}		x _a	x _a	x _{a, r}	x _{p, y}	x _{t, y}	x _y
Lesser black-backed gull (<i>Larus fuscus</i>) (breeding)	x _a	x _a	x _{a, r}		x _g		x _h	x _h	x _{h, r}	x _{p, y}	x _{u, y}	x _y
Northern gannet (<i>Morus bassanus</i>) (breeding)	x _{a, i}	x _{a, i}	x _{a, i, r}		x _j		x _h	x _h	x _{h, r}	x _{p, y}	x _{v, y}	x _y
Roseate tern (<i>Sterna dougallii</i>) (breeding)	x _a	x _a	x _{a, r}		x _b		x _a	x _a	x _{a, r}	x _{p, q, y}	x _{q, y}	x _{q, r, y}
Sandwich tern (<i>Sterna sandvicensis</i>) (breeding)	x _a	x _a	x _{a, r}		x _k		x _a	x _a	x _{a, r}	x _{p, q, y}	x _{q, y}	x _{q, r, y}
Shag (<i>Phalacrocorax aristotelis</i>)	x _l	x _l	x _{l, r}		x _l		x _l	x _l	x _{l, r}	x _{p, q, y}	x _{q, y}	x _{q, y}

<i>(breeding)</i>												
Seabird breeding assemblage including breeding kittiwake ⁶	xm, n, x	xm, n, x	xm, n, r, x		xm, o, x		xm, n, x	xm, n, x	xm, n, r, x	xm, p, x, y	xm, q, w, x, y	xm, q, r, x, y

Evidence

- a. The baseline surveys have shown some use of the survey area by this species. However, the project site is located further than the maximum recorded foraging range of arctic terns (11km), common terns (15km), puffins (200km), lesser black-backed gulls (181km), gannets (590km) and sandwich terns (49km) from the European site. Roseate terns are not identified as having a foraging range over 100km (NSER Revision C Table 1 and paragraphs 1.8.37-1.8.38 (Doc Ref: REP-480)); therefore there is low likelihood of any ecological linkage between wind farm site and the European site.
- b. Atlantic puffin and roseate tern: APEM Migropath modelling has not identified the species as likely to pass through the project site on migration (NSER Revision C Table 4 (Doc Ref: REP-480)). No assessment of impacts on the species provided by the applicant; however no concerns have been raised by either NE or RSPB.
- c. Arctic tern and common tern: Species observed flying at rotor height during baseline surveys (ES paragraph 11.5.13 (Doc Ref: APP-070)), and APEM Migropath modelling predicts species is likely to migrate through the wind farm site (NSER Revision C Table 4 (Doc Ref: REP-480)), and Annex 1 of RSPB and SOS's Written Response to Deadline II states that one of the spring migration lines of the species pass through the Solent.
- d. Arctic terns: At the 98% avoidance rate, collision modelling demonstrated 9.8 collisions per year, resulting in a 1.1% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). The seasonal breakdown of collisions is defined as: spring 7.2, breeding 0.1, autumn 0.1 and winter 0 (Task 22 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

When considered against the BDMP (North Sea), the predicted annual collision risk would represent an increase of 0.04% over the existing baseline mortality, an effect of negligible magnitude that would not be significant. As the predicted mortality for the species at Rampion wind farm is below the 1% threshold, the magnitude of the collision risk

⁶ As listed on <http://jncc.defra.gov.uk/page-1970>

to these species is considered negligible in the context of the BDMP population and no further population modelling has been carried out for this species (Task 23 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

The applicant considers this to be a precautionary assessment on the basis of recommendations by Maclean et al. (2009) of the use of an avoidance rate of 99% for terns (NSER Revision C paragraph 1.8.35 (Doc Ref: REP-480)).

Breeding mortality was not apportioned to this site as the species maximum foraging range is 11km and the European site is located 609km from the Rampion OWF location (NSER Revision C paragraph 1.8.37 (Doc Ref: REP-480)). Non-breeding mortality has also not been apportioned by European site.

APEM collision risk assessment update for migrant waterfowl (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)) has predicted 0.35 collisions in a 1580 annual migrant estimation (the annual numbers of flights through the Rampion Wind Farm Site predicted by APEM Migropath (see NSER Revision C Table 4 (Doc Ref: REP-480)) at 98% avoidance rate which is considered negligible magnitude.

- e. NE's response to 2Q.10 of Deadline IX (28 November 2013 (Doc Ref: REP-514)) states that NE agrees with the conclusions of the APEM modelling, and advises that there is no likelihood of significant adverse effects on migratory waterbirds.
- f. Common tern: At the 98% avoidance rate, collision modelling demonstrated 7.4 collisions per year, resulting in a 1.1% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). The seasonal breakdown of collisions is defined as: spring 7.2, breeding 0.1, autumn 0.1 and winter 0 (Task 22 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

When considered against the BDMP (North Sea), the predicted annual collision risk would represent an increase of 0.04% over the existing baseline mortality, an effect of negligible magnitude that would not be significant. As the predicted mortality for the species at Rampion wind farm is below the 1% threshold, the magnitude of the collision risk to these species is considered negligible in the context of the BDMP population and no further population modelling has been carried out for this species (Task 23 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

Breeding mortality was not apportioned to this site as the species mean maximum foraging range is 15km and the European site is located 609km from the Rampion OWF location (NSER Revision C paragraph 1.8.37 (Doc Ref: REP-480)). Non-breeding mortality has also not been apportioned by European site.

APEM collision risk assessment update for migrant waterfowl (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)) has predicted 0.35 collisions in a 1580 annual migrant estimation (the annual numbers of flights through

the Rampion Wind Farm Site predicted by APEM Migropath (see NSER Revision C Table 4 (Doc Ref: REP-480)) at 98% avoidance rate which is considered negligible magnitude.

- g. Lesser black-backed gull: Species observed flying at rotor height through the wind farm during baseline surveys (ES paragraph 11.5.13 (Doc Ref: APP-070)) and NE has highlighted a link between the species breeding at the European site and moving across the English south coast to and from wintering grounds (Written Response to Deadline II Annex C paragraph 4.3.2 and Written Response to Deadline VII question 12 (Doc Ref: REP-327)).

At the 98% avoidance rate, collision modelling demonstrated 31.4 collisions per year resulting in a 9.0% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). The seasonal breakdown of collisions is defined as: spring 3.6, breeding 11.5, autumn 8.8 and winter 7.6 (Task 11 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

When considered against the BDMP (North Sea), the predicted annual collision risk would represent an increase of 0.1% over the existing baseline mortality, an effect of negligible magnitude that would not be significant. As the predicted mortality for the species at Rampion wind farm is below the 1% threshold, the magnitude of the collision risk to these species is considered negligible in the context of the BDMP population and no further population modelling has been carried out for this species (Task 14 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

The project site is beyond the maximum foraging range for this species (181 km) (NSER Revision C Table 1 (Doc Ref: REP-480)).

The APEM Migropath modelling has not identified the species as likely to pass through the project site on migration (NSER Revision C Table 4 (Doc Ref: REP-480)).

Collision risk has not been apportioned to the European site.

- h. Given the extent of the offshore project and its orientation in relation to the main seabird migration route up/down the English Channel, a barrier effect would not result in either reduced utilisation of an ecological resource (through birds no longer being able to reach it through the barrier) or significantly increased energy expenditure by the birds in flying around the barrier (ES paragraph 11.6.29-31).
- i. Northern gannet: Studies have shown reductions in gannet numbers within wind farms post-construction reported in several studies, with displacement within wind farms (though not in any buffer zone around them) exceeding 90% in some cases. Therefore applying a displacement model for this species that assumes full displacement within the wind farm, but not extending into any of surrounding area would seem a more reasonable approach. In that case peak of

1,087 gannets would be predicted to be displaced at the project site, an effect the applicant considers to be of negligible magnitude that would not be significant (NSER Revision C paragraph 1.8.13 (Doc Ref: REP-480)).

- j. Northern gannet: Species recorded in collision zone (flying at rotor height) during baseline surveys (ES Tables 11.1 and 11.9 (Doc Ref: APP-070)) and Annex C of NE's Written Response to Deadline II highlights a linkage for gannets breeding at Bass Rock (a component of Forth Islands SPA, and by inference the Flamborough Head & Bempton Cliffs SPA) in the North Sea and those passing through or wintering in the Channel (paragraph 1.13.1 and 2.3.3-2.3.4).

At the 98% avoidance rate, collision modelling predicted 184.8 collisions per year resulting in a 5.1% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). The seasonal breakdown of collisions is defined as: spring 10.9, breeding 56.3, autumn 81.2 and winter 36.4 (Task 1 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

When considered against the BDMP (North Sea), the predicted annual collision risk would represent an increase of 0.4% over the existing baseline mortality, an effect of negligible magnitude that would not be significant (Task 1 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)). As the predicted mortality for the species at Rampion wind farm is below the 1% threshold, the magnitude of the collision risk to these species is considered negligible in the context of the BDMP population and no further population modelling has been carried out for this species (Task 5 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

RSPB and SOS accept that the increase over baseline mortality of 0.4% is not significant (RSPB and SOS response to deadline IX (Doc Ref: REP-517)).

All breeding season mortality has been apportioned to the Alderney West Coast and Burhou Islands Ramsar site (NSER Revision C paragraphs 1.8.15 (Doc Ref: REP-480)), and not this SPA; this SPA is located beyond the species mean maximum foraging range (229km) from the European site.

Non-breeding season mortality (129 collisions per year) was apportioned between Flamborough and Bempton Cliffs SPA and the Forth Islands SPA, which have population estimates of 11,061 and 55,482 breeding pairs respectively. This resulted in 108 collisions per year for the Forth Islands SPA population, which would result in a 0.3% increase over baseline mortality and is not considered a likely significant effect. (NSER Revision C paragraphs 1.8.19-1.8.22 (Doc Ref: REP-480)).

RSPB and SOS's response to Deadline IX (28 November 2013 (Doc Ref: REP-517)) states that they agree that when assessed against the BDMP, the increase over baseline mortality of 0.4% is not significant.

- k. Sandwich tern: At the 98% avoidance rate, collision modelling demonstrated 0.5 collisions per year resulting in a 0.3% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). All of the predicted collision risk (0.5 collisions per year, applying a precautionary 98% avoidance rate) would be likely to act on the Chichester and Langstone Harbours SPA, and therefore not this SPA. (ES Table 11.5 (Doc Ref: APP-070) and the applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)). It was confirmed by the applicant at the Issue Specific Hearing on 4 December 2013 that this method of apportionment was based on proximity and foraging range.
- l. Shag: Species not identified in the applicant's ES or NSER. The APEM Migropath modelling has not identified the species as likely to pass through the project site on migration (NSER Revision C Table 4 (Doc Ref: REP-480)). No concerns have been raised by either NE or RSPB.
- m. The applicant's assessment considers effects on individual qualifying features and does not provide a separate assessment of effects on the wintering waterfowl assemblage. However, at the Issue Specific Hearing on 4 December 2013, NE stated that "NE's concerns in this case have been around SPAs that designate individual species of birds" and NE "are not presently concerned about impacts on assemblages"
- n. The baseline surveys have shown some use of the survey area by kittiwake. However, the project site is located further than the maximum recorded foraging range of 120km (NSER Revision C Table 1 (Doc Ref: REP-480)); therefore there is low likelihood of any ecological linkage between wind farm site and the European site.
- o. Kittiwake: Species recorded in collision zone (flying at rotor height) during baseline surveys (ES Tables 11.1 and 11.9 (Doc Ref: APP-070)), and paragraph 1.13.1 and 3.2.1 of Annex C of NE's Written Response to Deadline II (Doc Ref: REP-327) highlights a linkage for kittiwakes breeding at North Sea colonies and those wintering in the Eastern Channel or passing through it to winter in the Celtic-Biscay Shelf; this linkage is supported by RSPB and SOS's Written Response to Deadline II (Doc Ref: REP-330). The APEM Migropath modelling has not identified the species as likely to pass through the project site on migration (NSER Revision C Table 4 (Doc Ref: REP-480)).

At the 98% avoidance rate, collision modelling demonstrated 220.9 collisions per year resulting in an 11.6% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). The seasonal breakdown of collisions is defined as: spring 10.9, breeding 63.7, autumn 35.2 and winter 111.1 (Task 6 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

When considered against the BDMP (North Sea), the predicted annual collision risk would represent an increase of 0.1% over the existing baseline mortality, an effect of negligible magnitude that would not be significant. As the predicted mortality for the species at Rampion wind farm is below the 1% threshold, the magnitude of the collision risk to these species is considered negligible in the context of the BDMP population and no further population modelling

has been carried out for this species (Task 9 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

RSPB and SOS accept that the increase over baseline mortality of 0.4% is not significant (RSPB and SOS response to deadline IX (Doc Ref: REP-517)).

The project site is beyond the maximum foraging range for this species (120km) (NSER Revision C Table 1 (Doc Ref: REP-480)).

Collision risk has not been apportioned to the European site.

- p. ES paragraph 11.9.10 (Doc Ref: APP-070) states that cumulative construction impacts would only occur if construction were to take place at same time as other sites with overlapping potential impact zones. The only potential for such an effect at Rampion would be indirect cumulative effects on prey species (fish) if piling at Rampion and Navitus Bay were carried out at the same time, but currently (December 2013) it is not anticipated to occur given the proposed timetables for the two sites.

The applicant stated at the Issue Specific Hearing on 4 December 2013 that the likelihood of an overlap in piling activities is low but, owing to different delivery programmes, if it were to occur this overlap (duration unspecified) at the end of the Rampion construction programme is described by the applicant as 'short'. The applicant stated that they have been in contact with the developer for Navitus Bay OWF and, as a contingency plan, if an overlap occurred the developers would maintain regular contact to coordinate piling activities such that piling would not occur concurrently. NE deferred to MMO on this matter, who confirmed that this would be an appropriate course of action if it could be enforced. The applicant subsequently proposed an option to monitor any potential overlap of piling activities through the submission of piling logs, as required by the Marine Mammal Mitigation Protocol, to demonstrate that piling did not occur concurrently.

- q. In-combination impacts on this feature were not specifically considered by the applicant. However, NE's written response to Deadline VIII (12 November 2013 (Doc Ref: REP-447)) states that NE is content with the ornithology scope of works, which includes assessment of cumulative impacts.
- r. The applicant states that impacts during the decommissioning phase would be likely to be similar to and no greater than those during construction (ES paragraph 11.6.72 (Doc Ref: APP-070)).
- s. Arctic tern: The applicant has calculated cumulative annual collision totals of 161 applying a 98% avoidance rate, 80 applying a 99% rate and 40 applying 99.5%. These represent a 1.0%, 0.5% and 0.2% increase in baseline mortality which would be low/negligible magnitude and not significant. The project makes only a small contribution and does not materially affect the outcome of the cumulative assessment. (NSER Revision C Table 6 (Doc Ref: REP-480) and Task

24 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481).

- t. Common tern: The applicant has calculated cumulative annual collision totals of 26 applying a 98% avoidance rate, 13 applying a 99% rate and 6 applying 99.5%. Even taking the most precautionary 98% avoidance rate this would represent only a 0.1% increase which would be a negligible magnitude cumulative effect. The project makes only a small contribution and does not materially affect the outcome of the cumulative assessment. (NSER Revision C paragraph 1.8.69-1.8.70 (Doc Ref: REP-480)).
- u. Lesser black-backed gulls: The applicant has calculated cumulative annual collision totals of 1,968 applying a 98% avoidance rate, 984 applying a 99% rate and 492 applying 99.5%. These represent a 17.5%, 8.7% and 4.4% increase over the baseline mortality respectively (taking the same North Sea baseline). These values suggest a medium/low magnitude cumulative effect would be possible on the North Sea population overall, which could be potentially significant. However, the project makes a small contribution and does not materially affect the outcome of the cumulative assessment (e.g. at a 98% avoidance rate, the cumulative impact would be equivalent to a 17.5% increase over the baseline mortality including the project and 17.2% without it). (NSER Revision C paragraphs 1.8.67-1.8.68 (Doc Ref: REP-480)).
- v. Northern gannet: The applicant has calculated cumulative annual collision totals of 4,068 applying a 98% avoidance rate, 2,034 applying a 99% rate and 1,017 applying 99.5%. These represent a 9.1%, 4.6% and 2.3% increase over the baseline mortality respectively (taking the east coast UK population as the baseline). These values suggest a low magnitude cumulative effect would be likely, though such an impact would not be significant given that:
- a 99.5% avoidance rate is likely to be a more realistic one to apply (Maclean et al. 2009).
 - gannets at existing wind farms have generally exhibited a high degree of macroavoidance of the wind farm, which would further reduce the actual collision risk.
 - population viability analysis for gannets (WWT Consulting, 2012) has shown the population to be robust to additional mortality.

The project makes only a small contribution and does not materially affect the outcome of the cumulative assessment (e.g. at a 98% avoidance rate, the cumulative impact would be equivalent to a 9.1% increase over the baseline mortality including the project and 8.7% without it) (NSER Revision C paragraphs 1.8.60-1.8.65 (Doc Ref: REP-480)).

- w. Kittiwake: The applicant has calculated cumulative annual collision totals of 3,609 applying a 98% avoidance rate, 1,805 applying a 99% rate, and 902 applying a 99.5%. These represent a 1.9%, 0.9% and 0.5% increase over the baseline mortality respectively (taking the North Sea baseline mortality). These values suggest a low/negligible magnitude cumulative effect would be likely. The project makes only a small contribution and does not materially

affect the outcome of the cumulative assessment. (e.g. at a 98% avoidance rate, the cumulative impact would be equivalent to a 1.9% increase over the baseline mortality including the project and 1.7% without it) (NSER Revision C paragraphs 1.8.65-1.8.66 (Doc Ref: REP-480)).

RSPB and SOS's response to Deadline IX (28 November 2013 (Doc Ref: REP-517)) agrees that Rampion contributes only a small amount to the cumulative assessment and that this is not significant.

- x. The RSPB and SOS accept that the wind farm would not pose a barrier, displacement or collision risk to kittiwakes from SPA breeding populations (RSPB and SOS's response to Deadline IX, 28 November 2013 (Doc Ref: REP-517)).
- y. At the Issue Specific Hearing on 4 December 2013, this site was not identified by NE in their list of outstanding concerns in relation to in-combination effects.

Note: NE's response to second questions (question 11 (Doc Ref: REP-417)) has confirmed that the site is not within their remit. The ExA wrote to Scottish Natural Heritage (SNH) on 22 November 2013 (Doc Ref: PD-021) inviting SNH to become involved in the examination should it wish to do so. SNH replied to the ExA by e-mail on 26 November 2013 stating that it did not wish to become involved in this examination (Doc Ref: Corr-01).

However, Appendix 14 of the applicant's written response to Deadline XI (SoCG – Not Agreed update. 10 December 2013 (Doc Ref: REP-564)) lists all of the sites and features for which there is agreement between NE and the applicant that there are no concerns of a likely significant effect; this list refers to breeding gannets at the Forth Islands SPA.

SPA Stage 1 Matrix H: Flamborough Head and Bempton Cliffs SPA

Site Code: UK9006101

Distance to project: 490km

European site features	Likely Effects of NSIP											
	Disturbance			Collision Risk			Barrier Effect			In-combination effects		
	C	O	D	C	O	D	C	O	D	C	O	D
Kittiwake (<i>Rissa tridactyla</i>) (breeding)	x _{a, j}	x _{a, j}	x _{a, i, j}		x _{b, c, j}		x _{a, d, j}	x _{a, d, j}	x _{a, d, i, j}	x _{g, h}	✓ _h	x _{h, i}
Northern Gannet (<i>Morus bassanus</i>) ⁷	x _e	x _e	x _{e, i}		x _{c, f}		x _{d, f}	x _{d, f}	x _{d, f, i}	x _{g, h}	✓ _h	x _{h, i}
Seabird breeding assemblage	x _k	x _k	x _k		x _k		x _k	x _k	x _k	x _{h, k}	x _{h, k}	x _{h, k}

Evidence

- a. Kittiwake: Species recorded within wind farm during baseline surveys (ES Table 11.8 – Table 11.12). Project site is located further than the maximum recorded foraging range of the species (120km) (NSER Revision C Table 1 (Doc Ref: REP-480)); therefore the ES states that there is low likelihood of any ecological linkage between wind farm site and the European site.
- b. Kittiwake: Species recorded in collision zone (flying at rotor height) during baseline surveys (ES Tables 11.1 and 11.9 (Doc Ref: APP-070)) and Annex C of NE's Written Response to Deadline II (paragraph 1.13.1 and 3.2.1) highlights a linkage for kittiwakes breeding at North Sea colonies and those wintering in the Eastern Channel or passing through it to winter in the Celtic-Biscay Shelf; this linkage is supported by RSPB and SOS's Written Response to Deadline II (Doc Ref: REP-330).

⁷ As noted in Natural England Written Representations, gannet is not formally listed as qualifying feature in its own right on SPA citation but is currently present in sufficient numbers to be classed as such, so it has been treated as a full qualifying SPA species in this assessment.

At the 98% avoidance rate, collision modelling demonstrated 220.9 collisions per year resulting in an 11.6% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). The seasonal breakdown of collisions is defined as: spring 10.9, breeding 63.7, autumn 35.2 and winter 111.1 (Task 6 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

When considered against the BDMP (North Sea), the predicted annual collision risk would represent an increase of 0.1% over the existing baseline mortality, an effect of negligible magnitude that would not be significant. As the predicted mortality for the species at Rampion wind farm is below the 1% threshold, the magnitude of the collision risk to these species is considered negligible in the context of the BDMP population and no further population modelling has been carried out for this species (Task 9 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

Non-breeding season mortality (157 collisions per year) was apportioned to the Flamborough Head and Bempton Cliffs SPA, which has a population estimate of 37,617 breeding pairs. This resulted in 19 collisions per year for this SPA population, which would result in a 0.1% increase over baseline mortality and is not considered a likely significant effect. (Task 7 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

RSPB and SOS's response to Deadline IX (28 November 2013 (Doc Ref: REP-517)) states that they agree that when assessed against the BDMP, the increase over baseline mortality of 0.1% is not significant.

Breeding season mortality has not been apportioned to this SPA. However, the project site is beyond the maximum foraging range (120km) from the European site (NSER Revision C Table 1 (Doc Ref: REP-480)). The APEM Migropath modelling has not identified the species as likely to pass through the project site on migration (NSER Revision C Table 4 (Doc Ref: REP-480)). NE has not raised any concerns regarding migratory routes for this species from this European site.

- c. NE's response to 2Q.10 of Deadline IX (28 November 2013 (Doc Ref: REP-514)) notes and agrees with the conclusions of no LSE on the Flamborough Head and Bempton Cliffs SPA from impacts of collision mortality for either the kittiwake or gannet feature arising from Rampion alone.
- d. Given the extent of the offshore project and its orientation in relation to the main seabird migration route up/down the English Channel, a barrier effect would not result in either reduced utilisation of an ecological resource (through birds no longer being able to reach it through the barrier) or significantly increased energy expenditure by the birds in flying around the barrier (ES paragraph 11.6.29-31).

- e. Northern gannet: Species recorded within wind farm during baseline surveys (ES Table 11.8 – Table 11.12). The project site is located beyond the species mean maximum foraging range (229km) from the European site, but within the maximum recorded range (590km) (NSER Revision C Table 1 (Doc Ref: REP-480)). Given the species a wide foraging range the temporary loss of a very small part of that range would be of negligible magnitude and not significant (NSER Revision C paragraph 1.8.13 (Doc Ref: REP-480)).

Studies have shown reductions in gannet numbers within wind farms post-construction reported in several studies, with displacement within wind farms (though not in any buffer zone around them) exceeding 90% in some cases. Therefore applying a displacement model for this species that assumes full displacement within the wind farm, but not extending into any of surrounding area would seem a more reasonable approach. In that case peak of 1,087 Gannets would be predicted to be displaced at Rampion, an effect of negligible magnitude that would not be significant (NSER Revision C paragraph 1.8.13 (Doc Ref: REP-480)).

- f. Northern gannet: Species recorded in collision zone (flying at rotor height) during baseline surveys (ES Tables 11.1 and 11.9 (Doc Ref: APP-070)) and Annex C of NE's Written Response to Deadline II highlights a linkage for gannets breeding at Bass Rock (a component of Forth Islands SPA, and by inference the Flamborough Head & Bempton Cliffs SPA) in the North Sea and those passing through or wintering in the Channel (paragraph 1.13.1 and 2.3.3-2.3.4).

At the 98% avoidance rate, collision modelling demonstrated 184.8 collisions per year resulting in a 5.1% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). The seasonal breakdown of collisions is defined as: spring 10.9, breeding 56.3, autumn 81.2 and winter 36.4 (Task 1 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

When considered against the BDMP (North Sea), the predicted annual collision risk would represent an increase of 0.4% over the existing baseline mortality, an effect of negligible magnitude that would not be significant (Task 1 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

As the predicted mortality for the species at Rampion wind farm is below the 1% threshold, the magnitude of the collision risk to these species is considered negligible in the context of the BDMP population and no further population modelling has been carried out for this species (Task 5 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

RSPB and SOS accept that the increase over baseline mortality of 0.4% is not significant (RSPB and SOS response to deadline IX (Doc Ref: REP-517)).

All breeding season mortality has been apportioned to the Alderney West Coast and Burhou Islands Ramsar site (NSER Revision C paragraphs 1.8.15 (Doc Ref: REP-480)), and not this SPA; this SPA is located beyond the species mean maximum foraging range (229km) from the European site.

Non-breeding season mortality (129 collisions per year) was apportioned between Flamborough and Bempton Cliffs SPA and the Forth Islands SPA, which have population estimates of 11,061 and 55,482 breeding pairs respectively. This resulted in 21 collisions per year for the Flamborough and Bempton Cliffs SPA population, which would result in a 0.3% increase over baseline mortality and is not considered a likely significant effect. (NSER Revision C paragraphs 1.8.19-1.8.22 (Doc Ref: REP-480)).

- g. ES paragraph 11.9.10 (Doc Ref: APP-070) states that cumulative construction impacts would only occur if construction were to take place at same time as other sites with overlapping potential impact zones. The only potential for such an effect at Rampion would be indirect cumulative effects on prey species (fish) if piling at Rampion and Navitus Bay were carried out at the same time, but currently (December 2013) it is not anticipated to occur given the proposed timetables for the two sites.

The applicant stated at the Issue Specific Hearing on 4 December 2013 that the likelihood of an overlap in piling activities is low but, owing to different delivery programmes, if it were to occur this overlap (duration unspecified) at the end of the Rampion construction programme is described by the applicant as 'short'. The applicant stated that they have been in contact with the developer for Navitus Bay OWF and, as a contingency plan, if an overlap occurred the developers would maintain regular contact to coordinate piling activities such that piling would not occur concurrently. NE deferred to MMO on this matter, who confirmed that this would be an appropriate course of action if it could be enforced. The applicant subsequently proposed an option to monitor any potential overlap of piling activities through the submission of piling logs, as required by the Marine Mammal Mitigation Protocol, to demonstrate that piling did not occur concurrently.

- h. Kittiwake and northern gannet: At the Issue Specific Hearing on 4 December 2013, NE stated that the only outstanding concern in relation to in-combination effects at this site is in respect of collision risk for gannet and kittiwake. It was stated that on the basis of information submitted at the time of the hearing a significant effect cannot be excluded and an appropriate assessment is likely to be required.
- i. The applicant states that impacts during the decommissioning phase would be likely to be similar to and no greater than those during construction (ES paragraph 11.6.72 (Doc Ref: APP-070)).
- j. The RSPB and SOS accept that the wind farm would not pose a barrier, displacement or collision risk to kittiwakes from SPA breeding populations (RSPB and SOS's response to Deadline IX, 28 November 2013 (Doc Ref: REP-517)).

k. The applicant's assessment considers effects on individual qualifying features and does not provide a separate assessment of effects on the wintering waterfowl assemblage. However, at the Issue Specific Hearing on 4 December 2013, NE stated that "NE's concerns in this case have been around SPAs that designate individual species of birds" and NE "are not presently concerned about impacts on assemblages".

Note: Appendix 14 of the applicant's written response to Deadline XI (SoCG – Not Agreed update. 10 December 2013 (Doc Ref: REP-564)) lists all of the sites and features for which there are continuing concerns and could not be included in the no likely significant effects list until NE had seen the additional information being provided by the applicant; this list contains non-breeding kittiwakes and gannets at Flamborough Head and Bempton Cliffs SPA.

SPA Stage 1 Matrix I: Alde-Ore Estuary SPA and Ramsar

Site Code: SPA - UK9009112, Ramsar - UK11002

Distance to project: 184km

European site features	Likely Effects of NSIP											
	Disturbance			Collision Risk			Barrier Effect			In-combination effects		
	C	O	D	C	O	D	C	O	D	C	O	D
Common redshank (<i>Tringa totanus</i>) (SPA and Ramsar over-winter)	x _a	x _a	x _{a, o}		x _{b, q}		x _a	x _a	x _{a, o}	x _{l, m}	x _m	x _{m, o}
Eurasian marsh harrier (<i>Circus aeruginosus</i>) (SPA only breeding)	x _c	x _c	x _{c, o}		x _{c, q}		x _c	x _c	x _{c, o}	x _{l, m}	x _m	x _{m, o}
Lesser black-backed gull (<i>Larus fuscus</i>) (SPA and Ramsar breeding)	x _d	x _d	x _{d, o}		x _e		x _f	x _f	x _{f, o}	x _l	x _n	x _o
Little tern (<i>Sterna albifrons</i>) (SPA only breeding)	x _g	x _g	x _{g, o}		x _h		x _f	x _f	x _{f, o}	x _{l, m}	x _m	x _{m, o}
Pied avocet (<i>Recurvirostra avosetta</i>) (SPA only breeding and SPA and Ramsar over-winter)	x _i	x _i	x _i		x _i		x _i	x _i	x _i	x _{i, m}	x _{i, m}	x _{i, m}
Ruff (<i>Philomachus pugnax</i>) (SPA only over-winter)	x _a	x _a	x _{a, o}		x _a		x _a	x _a	x _{a, o}	x _{l, m}	x _m	x _{m, o}
Sandwich tern	x _j	x _j	x _{j, o}		x _k		x _f	x _f	x _{f, o}	x _{l, m}	x _m	x _{m, o}

<i>(Sterna sandvicensis) (SPA only breeding)</i>												
Breeding seabird assemblage (SPA)	xp	xp	xp		xp		xp	xp	xp	xp	xp	xp
Wintering waterbird assemblage (SPA)	xp	xp	xp		xp		xp	xp	xp	xp	xp	xp

Evidence

- a. Species not recorded during baseline surveys (ES Tables 11.6 and 11.12 (Doc Ref: APP-070) and NSER Revision C Table 2 (Doc Ref: REP-480)); therefore there is no pathway for disturbance or barrier effects or collision risk. Collision risk modelling was not undertaken for the species.

APEM modelling identified redshank as a potential migrant through the proposed wind farm, but not ruff (NSER Revision C Table 4 (Doc Ref: REP-480)). No assessment of impacts on redshank has been provided by the applicant; however no concerns have been raised by either NE or RSPB

- b. Common redshank: Although species not recorded during baseline surveys, APEM Migropath modelling predicts species is likely to migrate through the wind farm site (NSER Revision C Table 4 (Doc Ref: REP-480)). APEM collision risk assessment update for migrant waterfowl predicts no likely significant collision risk at 98% avoidance rate (breeding = 0.41 and non-breeding = 1.29 of a 214 and 666 annual migrant estimations respectively (the annual numbers of flights through the Rampion Wind Farm Site predicted by APEM Migropath (see NSER Revision C Table 4 (Doc Ref: REP-480)). (Note this has not been apportioned by European site.) (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)).

NE has not raised any concerns regarding migratory routes for this species from this European site.

- c. Eurasian marsh harrier: Species not identified in the applicant’s ES or NSER. However, APEM collision risk assessment update for migrant waterfowl (Rule 17 response (Part 1) Appendix 3 Table 2 (Doc Ref: REP-442)) predicts no likely significant collision risk at 98% avoidance rate (0.14 collisions in a 57 annual migrant estimation (the annual numbers of flights through the Rampion Wind Farm Site predicted by APEM Migropath (see NSER Revision C Table 4 (Doc Ref: REP-480)) which the applicant considers to be negligible magnitude). (Note this has not been apportioned by European site.) No concerns have been raised by either NE or RSPB.
- d. Lesser black-backed gull: Species recorded within wind farm during baseline surveys (ES Table 11.8 – Table 11.12). The project site is located beyond the species maximum recorded range (181km), therefore the ES considered it

unlikely that the project site would be an important part of the species foraging range from the European site. (NSER Revision C Table 1 (Doc Ref: REP-480) and paragraph 1.6.2). Disturbance risk and barrier effects to this species would therefore be negligible and would not result in any likely significant effect.

- e. Lesser black-backed gull: Species observed flying at rotor height through the wind farm during baseline surveys (ES paragraph 11.5.13 (Doc Ref: APP-070)) and NE has highlighted a link between the species breeding at the Alde-Ore Estuary SPA and moving across the English south coast to and from wintering grounds (Written Response to Deadline II Annex C paragraph 4.3.2 and Written Response to Deadline VII question 12).

At the 98% avoidance rate, collision modelling demonstrated 31.4 collisions per year resulting in a 9.0% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). The seasonal breakdown of collisions is defined as: spring 3.6, breeding 11.5, autumn 8.8 and winter 7.6 (Task 11 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

When considered against the BDMP (North Sea), the predicted annual collision risk would represent an increase of 0.1% over the existing baseline mortality, an effect of negligible magnitude that would not be significant. As the predicted mortality for the species at Rampion wind farm is below the 1% threshold, the magnitude of the collision risk to these species is considered negligible in the context of the BDMP population and no further population modelling has been carried out for this species (Task 14 of Ornithology Work to address Natural England's written representations relating to marine ornithology, Rule 17 Response, 12 November 2013 (Doc Ref: REP-481)).

A worst case assumption is that all predicted breeding season mortality would be apportioned to the Baie de Seine Occidentale (Iles de Saint Marcouf) SPA, and not this site (NSER Revision C paragraph 1.8.26 (Doc Ref: REP-480)).

Non-breeding mortality (20 collisions per year) was apportioned to this site, which has a population estimate of 1,600 breeding pairs, assuming equal mixing according to population size with the North Sea population (the BDMP). This resulted in 0.4 collisions per year for this SPA population, which would result in a 0.1% increase over baseline mortality and is not considered a likely significant effect. (NSER Revision C paragraphs 1.8.29-1.8.33 (Doc Ref: REP-480)).

NE's response to 2Q.10 of Deadline IX (28 November 2013 (Doc Ref: REP-514)) notes and agrees with the conclusions of no LSE on the Alde-Ore Estuary SPA from impacts of collision mortality for lesser black backed gull feature arising from Rampion alone.

- f. Given the extent of the offshore project and its orientation in relation to the main seabird migration route up/down the English Channel, a barrier effect would not result in either reduced utilisation of an ecological resource (through birds

no longer being able to reach it through the barrier) or significantly increased energy expenditure by the birds in flying around the barrier (ES paragraph 11.6.29-31).

- g. Little tern: Species recorded in wider survey area during baseline surveys, but outside potential disturbance impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (NSER Revision C Table 2 (Doc Ref: REP-480)). Predominantly a coastal species, as found in the baseline surveys, and would not be expected to occur frequently as far out at sea as the wind farm would be located. The project site is beyond the species maximum foraging range (11km) from the European site. Disturbance risk and barrier effects to this species would therefore be negligible and would not result in any likely significant effect (NSER Revision C paragraph 1.8.56 (Doc Ref: REP-480) and ES Table 11.5 (Doc Ref: APP-070)).
- h. Little tern: Species recorded in wider survey area during baseline surveys, but outside potential disturbance impact zone (defined in paragraph 1.8.4 of NSER Revision C (Doc Ref: REP-480) as a 4km area around the windfarm in which birds may be at risk of displacement) (NSER Revision C Table 2 (Doc Ref: REP-480)). No flights observed within the collision risk zone and no flights at all were observed at rotor height across the whole survey area; collision risk would be very low and would not result in any likely significant effect (NSER Revision C paragraph 1.8.56 (Doc Ref: REP-480)).
- i. Pied Avocet: Species not identified in the applicant's ES or NSER. The APEM Migropath modelling has not identified the species as likely to pass through the project site on migration (NSER Revision C Table 4 (Doc Ref: REP-480)). No concerns have been raised by either NE or RSPB regarding this species.
- j. Sandwich tern: Species recorded in wider survey area during baseline surveys, but outside potential impact zone (NSER Revision C Table 2 (Doc Ref: REP-480)). The project site is located beyond the species mean maximum foraging distance (49km) from the European site (NSER Revision C paragraph 1.8.40 (Doc Ref: REP-480)). No concerns have been raised by either NE or RSPB regarding this species from this European site.
- k. Sandwich tern: At the 98% avoidance rate, collision modelling demonstrated 0.5 collisions per year resulting in a 0.3% increase in baseline mortality of the regional population (for a 175 x 4MW turbine worst-case option) (ES Table 11.15 (Doc Ref: APP-070)). All of the predicted collision risk (0.5 collisions per year, applying a precautionary 98% avoidance rate) would be likely to act on the Chichester and Langstone Harbours SPA, and therefore not this SPA. (ES Table 11.5 (Doc Ref: APP-070) and the applicant's Written Response to Deadline II (15 August 2013): Appendix 9 (Doc Ref: REP-308)).
- l. ES paragraph 11.9.10 (Doc Ref: APP-070) states that cumulative construction impacts would only occur if construction were to take place at same time as other sites with overlapping potential impact zones. The only potential for such an effect at Rampion would be indirect cumulative effects on prey species (fish) if piling at Rampion and Navitus Bay were

carried out at the same time, but currently (December 2013) it is not anticipated to occur given the proposed timetables for the two sites.

The applicant stated at the Issue Specific Hearing on 4 December 2013 that the likelihood of an overlap in piling activities is low but, owing to different delivery programmes, if it were to occur this overlap (duration unspecified) at the end of the Rampion construction programme is described by the applicant as 'short'. The applicant stated that they have been in contact with the developer for Navitus Bay OWF and, as a contingency plan, if an overlap occurred the developers would maintain regular contact to coordinate piling activities such that piling would not occur concurrently. NE deferred to MMO on this matter, who confirmed that this would be an appropriate course of action if it could be enforced. The applicant subsequently proposed an option to monitor any potential overlap of piling activities through the submission of piling logs, as required by the Marine Mammal Mitigation Protocol, to demonstrate that piling did not occur concurrently.

- m. In-combination impacts on this feature were not specifically considered by the applicant. However, NE's written response to Deadline VIII (12 November 2013 (Doc Ref: REP-447)) states that NE is content with the ornithology scope of works, which includes assessment of cumulative impacts.
- n. Lesser black-backed gull: The applicant has calculated cumulative annual collision totals of 1,968 applying a 98% avoidance rate, 984 applying a 99% rate and 492 applying 99.5%. These represent a 17.5%, 8.7% and 4.4% increase over the baseline mortality respectively (taking the same North Sea baseline). These values suggest a medium/low magnitude cumulative effect would be possible on the North Sea population overall, which could be potentially significant. However, the project makes a small contribution and does not materially affect the outcome of the cumulative assessment (e.g. at a 98% avoidance rate, the cumulative impact would be equivalent to a 17.5% increase over the baseline mortality including the project and 17.2% without it). (NSER Revision C paragraphs 1.8.67-1.8.68 (Doc Ref: REP-480)).

At the Issue Specific Hearing on 4 December 2013, NE stated that for this species at this site an appropriate assessment is not required for the project alone or in combination, as the contribution from Rampion OWF is so slight as to not merit an in-combination assessment.

- o. The applicant states that impacts during the decommissioning phase would be likely to be similar to and no greater than those during construction (ES paragraph 11.6.72 (Doc Ref: APP-070)).
- p. The applicant's assessment considers effects on individual qualifying features and does not provide a separate assessment of effects on the wintering waterfowl or breeding seabird assemblages. However, at the Issue Specific Hearing on 4 December 2013, NE stated that "NE's concerns in this case have been around SPAs that designate individual species of birds" and NE "are not presently concerned about impacts on assemblages".

- q. NE's response to 2Q.10 of Deadline IX (28 November 2013 (Doc Ref: REP-514)) states that NE agrees with the conclusions of the APEM modelling, and advises that there is no likelihood of significant adverse effects on migratory waterbirds.

NOTE: Appendix 14 of the applicant's written response to Deadline XI (SoCG – Not Agreed update. 10 December 2013 (Doc Ref: REP-564)) lists all of the sites and features for which there is agreement between NE and the applicant that there are no concerns of a likely significant effect; this list contains all of the features at the Alde-Ore Estuary SPA as listed in Matrix I.

SAC Stage 1 Matrix A: Solent Maritime SAC

Site Code: UK0030059

Distance to project: 38km

European site features	Likely Effects of NSIP								
	Suspended sediment			Seabed thickness			Hydrodynamics		
	C	O	D	C	O	D	C	O	D
Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Estuaries (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Spartina swards (<i>Spartinion maritima</i>) (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Annual vegetation of drift lines (Q)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Coastal lagoons (Q)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Mudflats and sandflats not covered by seawater at low tide (Q)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Perennial vegetation of stony banks (Q)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Salicornia and other annuals colonising mud and sand (Q)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Sandbanks which are slightly covered by sea water all the time (Q)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Shifting dunes along the shoreline with <i>Ammophila arenaria</i> ('white dunes') (Q)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Desmoulin's whorl snail (<i>Vertigo moulinsiana</i>) (Q)	x _{d, e}	x _{d, e}	x _{d, e}	x _{d, e}	x _{d, e}	x _{d, e}	x _{d, e}	x _{d, e}	x _{d, e}

SAC Stage 1 Matrix B: South-Wight Maritime SAC

Site Code: UK0030061

Distance to project: 42km

European site features	Likely Effects of NSIP								
	<i>Suspended sediment</i>			<i>Seabed thickness</i>			<i>Hydrodynamics</i>		
	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>
Reefs (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Submerged or partially submerged sea caves (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Vegetated sea cliffs of the Atlantic and Baltic coasts (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	

SAC Stage 1 Matrix C: Solent and Isle Wight Lagoon SAC

Site Code: UK0017073

Distance to project: 40km

European site features	Likely Effects of NSIP								
	<i>Suspended sediment</i>			<i>Seabed thickness</i>			<i>Hydrodynamics</i>		
	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>
Coastal Lagoons (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	

SAC Stage 1 Matrix D: Bassurelle Sandbank SCI

Site Code: UK0030368

Distance to project: 60km

European site features	Likely Effects of NSIP								
	<i>Suspended sediment</i>			<i>Seabed thickness</i>			<i>Hydrodynamics</i>		
	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>
Sandbanks which are slightly covered by sea water all the time (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	

SAC Stage 1 Matrix E: Wight-Barfleur Reef cSAC

Site Code: UK0030380

Distance to project: 56km

European site features	Likely Effects of NSIP								
	<i>Suspended sediment</i>			<i>Seabed thickness</i>			<i>Hydrodynamics</i>		
	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>
Reefs (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	

SAC Stage 1 Matrix F: Dungeness SAC

Site Code: UK0013059

Distance to project: 57km

European site features	Likely Effects of NSIP								
	Suspended sediment			Seabed thickness			Hydrodynamics		
	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>
Annual vegetation of drift lines (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Perennial vegetation of stony banks (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Great Crested Newt (<i>Triturus cristatus</i>) (Q)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	

SAC Stage 1 Matrix G: Hastings Cliff SAC

Site Code: UK0030165

Distance to project: 46km

European site features	Likely Effects of NSIP								
	Suspended sediment			Seabed thickness			Hydrodynamics		
	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>
Vegetated sea cliffs of the Atlantic and Baltic coasts (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	

SAC Stage 1 Matrix H: Lyme Bay and Torbay SCI

Site Code: UK0030372

Distance to project: 162km (direct) 168km (around the coast)

European site features	Likely Effects of NSIP								
	Suspended sediment			Seabed thickness			Hydrodynamics		
	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>
Reefs (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	
Submerged or partially submerged sea caves (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	

SAC Stage 1 Matrix I: Margate and Long Sands SCI

Site Code: UK0030371

Distance to project: 115km (direct) 147km (around the coast)

European site features	Likely Effects of NSIP								
	Suspended sediment			Seabed thickness			Hydrodynamics		
	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>	<i>C</i>	<i>O</i>	<i>D</i>
Sandbanks which are slightly covered by sea water all the time (P)	x _{a, e}	x _{b, e}	x _{c, e}	x _{a, e}	x _{b, e}	x _{c, e}		x _{b, e}	

SAC and SCI matrices evidence

- a. Potential increases in suspended sediment and seabed thickness during construction were modelled as part of the impact assessment, and are discussed in Sections 6 (Physical Environment) (Doc Ref: APP-065) and 7 (Benthos and Sediment Quality) (Doc Ref: APP-066).

The effects of foundations and cable related construction activities with respect to suspended sediment concentrations (SCCs) and bed level changes are considered to be of small magnitude, have only a limited spatial effect and are temporary. The potential effect is therefore considered of minor significance (ES paragraphs 6.5.29-6.5.35) (Doc Ref: APP-065).

Figure 6 of the NSER Report Revision B (Doc Ref: REP-255) identifies the locations of the SACs, the location of the wind farm site, and the extent of the wider hydrodynamic impact zone (the far-field study boundary). Figure 6 shows that all SACs are outside of the impact zones, hence it can be concluded that the potential for effects on the habitats are negligible, and that the integrity of the SACs considered, from a habitats perspective, will not be significantly affected (HRA matrices Version 5 (Doc Ref: REP-482)).

In summary, the study found that impacts would be minor, temporary and localised. The slight increase in suspended sediment that might be experienced would be in the context of levels that can vary widely with natural conditions, particularly in shallow waters. It is not anticipated that any distant sites (e.g. SACs) would be impacted (ES paragraph 9.6.12 (Doc Ref: APP-068)).

- b. The presence of turbines will cause a localised increase in current around the turbine foundations, leading to scour. The sediment will be mobilised and carried away from a turbine causing an elliptical scour hole to develop. The majority of the suspended sediment will settle from suspension within a short distance (paragraph 6.5.48 (Doc Ref: APP-065)). The predicted changes to the tidal regime resulting from the presence of the array would not appreciably affect sediment mobility and consequently the existing seabed form (ES paragraph 6.5.50 (Doc Ref: APP-065)).

ES paragraph 6.5.51 (Doc Ref: APP-065) predicts no significant changes to the wave and tidal regimes are predicted to occur at a number of designated sites, including Pagham Harbour SPA. No reference is made to the SACs detailed in the matrices above, however they are all located further than Pagham Harbour from the application site.

Given the minor predicted changes to the speed and direction of tidal currents with the array in place, it is considered very unlikely that measurable differences to the rate and direction of suspended sediment transport will occur. The potential for changes to the suspended-load sediment transport regime resulting from the presence of the wind farm infrastructure is considered to be of small magnitude, have only an array scale spatial effect and to be present over the lifetime of the wind farm (ES paragraphs 6.5.52-6.5.54 (Doc Ref: APP-065)). No specific reference is made in the

ES to impacts on the SACs detailed in the matrices above, however all of the European sites are located more than 38km from the project site.

Elevated current velocities would occur to the east-northeast of each pile. The change in velocities is likely to cause a medium impact that is of minor significance within the offshore wind farm area; however the impact will be confined to the development area. More widespread changes are typically no more than $\pm 0.03\text{ms}^{-1}$ which remains immeasurable in the field (ES paragraph 6.5.63-6.5.64 (Doc Ref: APP-065)). No specific reference is made in the ES to impacts on the SACs detailed in the matrices above, however all of the European sites are located more than 38km from the project site.

- c. The applicant states that the potential impacts of the decommissioning phase of the project will be similar to those produced during the construction phase (ES paragraph 9.6.20 (Doc Ref: APP-068)).
- d. Feature not identified in the applicant's matrices; it is assumed there is no pathway for effect.
- e. NE's response to Deadline II (Q.8 and 33 (Doc Ref: REP-327)), confirms that NE does not have any specific concerns in relation to the onshore elements of the scheme in connection to potential effects on European Sites. NE agrees that any changes to the substrate, water quality or coastal processes as a result of the development of the Rampion OWF are judged to be negligible. Given the distance of the sites from the works there is no pathway for any impact. At the Issue Specific Hearing on 4 December 2013, NE confirmed that it is content with the applicant's justification in the matrices that there is no likely significant effect for any qualifying features for SACs.

Note: In-combination effects have not been considered in these screening matrices as impacts from the NSIP itself on the SACs reviewed are negligible and will not therefore contribute to in-combination impacts on the designated features (as stated in the matrices footnotes of NSER Report Revision B (Doc Ref: REP-255)).

4 STAGE 2: EFFECTS ON INTEGRITY

Background

- 4.1 The screening exercise has identified the potential for a likely significant effect on one or more features of the European sites considered. This section summarises the anticipated effects on the integrity of the European sites, in the context of their conservation objectives.

Stage 2 Matrices Key

? = At the time of issuing the RIES (13 December 2013) agreement had not been reached between the applicant and the SNCB that adequate information has been provided to exclude a LSE.

C = construction

O = operation

D = decommissioning

- 4.2 Evidence supporting the conclusions is detailed in footnotes for each table with reference to relevant supporting documentation.
- 4.3 Where an impact is not considered relevant for a feature of a European site, the cell in the matrix is formatted as follows:



SPA Stage 2 Matrix A: Alderney West Coast and the Burhou Islands Ramsar site

Site Code: UK22002

Distance to project: 180km

Conservation objectives: Not available on NE website (European site not within their jurisdiction)

European site features	Likely Effects of NSIP		
	<i>In-combination effects</i>		
	<i>C</i>	<i>O</i>	<i>D</i>
Northern gannet (Morus Bassanus)		?a	

Evidence

- a. Northern gannet: The applicant's cumulative collision risk assessment has calculated annual collision totals of 4,068 applying a 98% avoidance rate, 2,034 applying a 99% rate and 1,017 applying 99.5%. These represent a 9.1%, 4.6% and 2.3% increase over the baseline mortality respectively (taking the east coast UK population as the baseline). These values suggest a low magnitude cumulative effect would be likely, though such an impact would not be significant given that:
- a 99.5% avoidance rate is likely to be a more realistic one to apply (Maclean et al. 2009).
 - gannets at existing wind farms have generally exhibited a high degree of macro avoidance of the wind farm, which would further reduce the actual collision risk.
 - population viability analysis for gannets (WWT Consulting, 2012) has shown the population to be robust to additional mortality.

The applicant states that the project makes only a small contribution and does not materially affect the outcome of the cumulative assessment (e.g. at a 98% avoidance rate, the cumulative impact would be equivalent to a 9.1% increase over the baseline mortality including the project and 8.7% without it). (NSER Revision C paragraphs 1.8.60-1.8.65 (Doc Ref: REP-480)).

Cumulative collision risk has not been apportioned by the applicant to the European site. The applicant considers that such a detailed in-combination assessment is not necessary as the contribution to potential impacts of the project alone would not result in a likely significant effect. The applicant states that in-combination effects have been assessed through the gannet assessments provided in the applicant's Additional Clarification on Ornithology (Applicant's Written Response to Deadline XI. Additional Clarification on Ornithology, paragraph 42 (Doc Ref: REP-565)).

The RSPB and SOS do not agree that the cumulative collision risk to gannets is insignificant, however they do accept that Rampion contributes only a small increase. (RSPB and SOS's response to Deadline IX, 28 November 2013 (Doc Ref: REP-517)).

Note: NE state it is beyond its remit to comment on implications for designated sites within other EC member states jurisdiction (NE's Written Response to Deadline II, Annex C, paragraph 2.3.2 (Doc Ref: REP-327)). Appendix 2 of NE's response to Deadline VIII (Doc Ref: REP-447) contains a clarification note on the legal status of Guernsey and associated protected sites which explains that the Environment Department of Guernsey is the lead contact in relation to the site.

The ExA wrote to the Environment Department of Guernsey inviting them to become involved in the examination should it wish to do so on 22 November 2013 (Doc Ref: PD-020). To date (13 December 2013), no response has been received.

SPA Stage 2 Matrix B: Flamborough Head and Bempton Cliffs SPA

Site Code: UK9006101

Distance to project: 490km

Conservation objectives:

Avoid the deterioration of the habitats of the qualifying features, and the significant disturbance of the qualifying features, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving the aims of the Birds Directive.

Subject to natural change, to maintain or restore:

- The extent and distribution of the habitats of the qualifying features;
- The structure and function of the habitats of the qualifying features;
- The supporting processes on which the habitats of the qualifying features rely;
- The populations of the qualifying features;
- The distribution of the qualifying features within the site.

European site features	Likely Effects of NSIP		
	<i>In-combination effects</i>		
	<i>C</i>	<i>O</i>	<i>D</i>
Kittiwake (<i>Rissa tridactyla</i>)		?a	
Northern gannet (<i>Morus Bassanus</i>)		?b	

Evidence

- a. Kittiwake: The applicant's cumulative collision risk assessment has calculated annual collision totals of 3,609 applying a 98% avoidance rate, 1,805 applying a 99% rate, and 902 applying a 99.5%. These represent a 1.9%, 0.9% and 0.5% increase over the baseline mortality respectively (taking the North Sea baseline mortality). These values suggest a low/negligible magnitude cumulative effect would be likely. The applicant states that the project makes only a small contribution and does not materially affect the outcome of the cumulative assessment (e.g. at a 98% avoidance rate, the cumulative impact would be equivalent to a 1.9% increase over the baseline mortality including the project and 1.7% without it). (NSER Revision C paragraphs 1.8.65-1.8.66 (Doc Ref: REP-480)). The applicant's assessment of in-combination effects does not apportion collision risk to individual European Sites.

RSPB and SOS's response to Deadline IX (28 November 2013 (Doc Ref: REP-517)) agrees that Rampion contributes only a small amount to the cumulative assessment on kittiwakes and that this is not significant.

An in-combination assessment, based on the information presented in the East Anglia One examination, was submitted by NE (2 December 2013. Annex B (Doc Ref: H-062)). The reasoning behind NE's in-combination assessment is provided in Natural England's submission for Deadline XI (Annex 1: Action 4: Natural England's In-combination Assessment tables (Annex A and B submission) 10 December 2013. (Doc Ref: REP-570)). The assessment submitted stated that should the Examining Authority be minded to adopt a 'building block approach' to the in-combination assessment, it can be concluded that the level of cumulative mortality up to and including the Rampion windfarm (345 collisions) will not have an adverse impact on the kittiwake feature of the Flamborough Head and Bempton Cliffs SPA in combination with previously consented windfarms, and those windfarm applications not yet determined, but submitted before Rampion.

However, NE's document proposed the use of a tiered approach to the in combination assessment, taking into account all other windfarms currently submitted for determination, which in summary:

- calculated an estimated collision of 932 for all ages and 759 adult birds that might be associated with this SPA (assuming an avoidance rate of 98%)
- suggested a lower potential biological removal (PBR) value of 250 and an upper PBR value of 350 and that this is exceeded by the calculated collision risk (759).

NE advised that it is impossible to conclude that no reasonable scientific doubt remains as to the absence of an adverse effect on this colony as a result of predicted levels of in combination collision mortality.

At the Issue Specific Hearing on 4 December 2013 in response to the in-combination assessment submitted by NE, the applicant stated that in its view the numbers for seabirds presented for in-combination mortality by NE do not adequately take into account the following factors:

- That NE's tiered approach to assessment considers the order in which applications are submitted and not the likely timescale for a consenting decision. The applicant asserts that the order in which the projects are considered in the assessment should take into account the likely timescales for a consenting decision, arguing that a number of Scottish wind farms should be considered after the Rampion and East Anglia offshore wind farms on the basis that projects in Scotland are consented under a different regime for which there is currently no defined timetable for issuing decisions. John Houghton, legal representative speaking on behalf of the applicant, submitted that "It seems to EoN that both the connectivity issue and the uncertainty issue weigh heavily in direction of taking the Scottish sites [interpreted in this RIES to mean 'Scottish offshore wind farm projects'] out of consideration for the purpose of this assessment".
- The collision mortality attributed to a number of the Scottish offshore wind farms in NE's in-combination assessment is large and some of the proposed wind farms are very close to a SPA with a large gannet population, and for that reason the Scottish regulators are requesting a technical review of collision risk figures and how they have been calculated. This review has to yet been completed and therefore figures are not yet available, meaning that there is some uncertainty concerning the figures for collision risk attributed to these projects.
- A higher level of uncertainty should be assigned to the collision risk figures provided in NE's in-combination assessment for Tier 1 and Tier 2 projects which have been consented or under construction. This is on the basis that the figures presented in the assessment are sourced from predictions of mortality at the planning application stage based on a worst case Rochdale envelope approach to turbine layout i.e. a large number of small turbines. The applicant submits that at the detailed design or construction stage the developer has opted for a small number of larger turbines which would result in a reduced collision risk. Whilst not substantiated with hard evidence, the applicant cited a list of cases where such a reduction has in the applicant's view occurred, including the London Array, Kentish Flats, Humber Gateway, Westernmost Ruff, Dudgeon and Galloper offshore wind farms. Therefore in the applicant's view the figures put forward by NE represent an overestimate for a number of Tier 1 and Tier 2 projects. At this stage no evidence has been submitted to the examination in support of this statement.

Subsequent to the Issue Specific Hearing on 4 December 2013, and in response to NE's in-combination assessment, the applicant presented their assessment of in-combination effects on kittiwake for the Flamborough Head and Bempton Cliffs (FHBC) SPA population (Written Response to Deadline XI. Additional Clarification on Ornithology. 10 December 2013. (Doc Ref: REP-565)).

The assessment has been carried out through the preparation of 'tiered approach' tables based on the list of projects supplied by NE. However the applicant's assessment applies a different ordering of offshore wind farms based on when consent was received or is expected to be received, rather than in order of submission date. This approach is considered by the applicant to be most relevant to the decision making process (Paragraph 19 (Doc Ref.)). The applicant's assessment concludes that applying an avoidance rate of 98% neither the lower nor the upper PBR threshold has been exceeded by those projects that have been constructed or consented or have an expected date for the consent decision up to the proposed Rampion OWF in the 'tiered approach'. The applicant concludes that the in-combination assessment of the proposed Rampion OWF along with other relevant OWFs in the North Sea and English Channel will not have an adverse effect on the integrity of the kittiwake population that is an interest feature of the FHBC SPA (Applicant's Written Response to Deadline XI. Additional Clarification on Ornithology, Paragraph 33 (Doc Ref. REP-565)).

It is noted that if all Tier 1-6 projects presented in Table 10 of the applicant's assessment are included, there is a total predicted accumulated mortality for kittiwake at the FHBC SPA of 931.5 (all birds) and 758.6 (adult birds) applying a 98% avoidance rate. This is set in the context of a lower PBR of 250 adult birds and an upper PBR of 350 adult birds. (Written Response to Deadline XI. Additional Clarification on Ornithology. 10 December 2013. (Doc Ref: REP-565)).

- b. Northern gannet: The applicant's cumulative collision risk assessment for gannet has calculated annual collision totals of 4,068 applying a 98% avoidance rate, 2,034 applying a 99% rate and 1,017 applying 99.5%. These represent a 9.1%, 4.6% and 2.3% increase over the baseline mortality respectively (taking the east coast UK population as the baseline). These values suggest a low magnitude cumulative effect would be likely, though such an impact would not be significant given that:
- a 99.5% avoidance rate is likely to be a more realistic one to apply (Maclean et al. 2009).
 - gannets at existing wind farms have generally exhibited a high degree of macro avoidance of the wind farm, which would further reduce the actual collision risk.
 - population viability analysis for gannets (WWT Consulting, 2012) has shown the population to be robust to additional mortality.

The applicant states that the project makes only a small contribution and does not materially affect the outcome of the cumulative assessment (e.g. at a 98% avoidance rate, the cumulative impact would be equivalent to a 9.1% increase over the baseline mortality including the project and 8.7% without it). (NSER Revision C paragraphs 1.8.60-1.8.65 (Doc Ref: REP-480)).

An in-combination assessment, based on the information presented in the East Anglia One examination, was submitted by NE (2 December 2013. Annex a (Doc Ref: H-061)). The reasoning behind NE's in-combination assessment is provided in NE's submission for Deadline XI (Annex 1: Action 4: Natural England's In-combination Assessment tables (Annex A and B submission) 10 December 2013. (Doc Ref: REP-570)) The assessment submitted used a tiered approach, which in summary:

- calculated an estimated collision of 1064 for all ages and 798 adult birds that might be associated with this SPA (assuming an avoidance rate of 98%; at an avoidance rate of 99% these values are halved i.e. 532 for all ages and 399 adults)
- referred to the Population Viability Analysis (PVA) which considered the sustainability of these predicted levels of mortality at either 99% or 98% avoidance rate. The PVA model predicts that the level of additional mortality at which there is a 5% chance that the colony growth rate would drop below 1 equates to 0.72% of the number of breeding adults in the colony irrespective of colony size; this equates to 160 birds. The model also predicts that the level of additional mortality at which there would be a 50% chance the colony growth rate would drop below 1 equates to 1.93% of the number of breeding adults in the colony irrespective of colony size; this equates to 427 birds. The in combination collision totals attributed to Flamborough i.e. 532 at 99% or 1064 at 98% are in excess of even the greater of these two thresholds and suggest a large risk of the population growth rate being reduced below 1.
- suggested potential biological removal (PBR) values of 286 when using a generic colony growth rate (9.9% per annum) and a value of 361 when using a Flamborough specific annual growth rate (12.5% per annum), and states that even at the 99% avoidance rate, the collision risk (399) is above the PBR.

NE advised that it is impossible to conclude that no reasonable scientific doubt remains as to the absence of an adverse effect on this colony as a result of predicted levels of in combination collision mortality.

Should the Secretary of State be minded to take into account all other windfarms currently in examination by the Planning Inspectorate (Hornsea 1 and Dogger Bank Creyke Beck) then, even assuming an avoidance rate of 99%, the lower PBR threshold is exceeded and reasonable scientific doubt would remain regarding the absence of an adverse impact on the gannet feature of the Flamborough Head and Bempton Cliffs SPA.

NE's document (2 December 2013. Annex a (Doc Ref: H-061)) further stated that should the Examining Authority be minded to take a 'building block' approach to the in combination assessment, at a 98% Avoidance Rate an adverse impact on the gannet feature of the Flamborough Head and Bempton Cliffs SPA cannot be ruled out as the predicted cumulative mortality (488) exceeds the upper PBR threshold (361). However, at a 99% Avoidance rate the cumulative total up to and including Rampion (244) is below the lower PBR threshold and so an adverse impact could be ruled out.

The RSPB and SOS do not agree that the cumulative collision risk to gannets is insignificant; however they do accept that Rampion contributes only a small increase. (RSPB and SOS's response to Deadline IX, 28 November 2013 (Doc Ref: REP-517)).

At the Issue Specific Hearing on 4 December 2013 the applicant stated that greater reliance can be placed on a 99% avoidance rate for gannet on the basis of a Dutch study of seabird avoidance for offshore wind farms (no reference provided).

Also at the Issue Specific Hearing on 4 December 2013 in response to the in-combination assessment submitted by NE, the applicant stated that in its view the numbers of seabirds presented for in-combination mortality by NE do not adequately take into account the following factors:

- that NE's tiered approach to assessment considers the order in which applications are submitted and not the likely timescale for a consenting decision. The applicant asserts that the order in which the projects are considered in the assessment should take into account the likely timescales for a consenting decision, arguing that a number of Scottish wind farms should be considered after the Rampion and East Anglia offshore wind farms on the basis that projects in Scotland are consented under a different regime for which there is currently no defined timetable for issuing decisions. John Houghton, legal representative speaking on behalf of the applicant, submitted that "It seems to EoN that both the connectivity issue and the uncertainty issue weigh heavily in direction of taking the Scottish sites [interpreted in this RIES to mean 'Scottish offshore wind farm projects'] out of consideration for the purpose of this assessment".
- the collision mortality attributed to a number of the Scottish offshore wind farms in NE's in-combination assessment is large and some of the proposed wind farms are very close to an SPA with a large gannet population, and for that reason the Scottish regulators are requesting a technical review of collision risk figures and how they have been calculated. This review has to yet been completed and therefore figures are not yet available, meaning that there is some uncertainty concerning the figures for collision risk attributed to these projects.

- a higher level of uncertainty should be assigned to the collision risk figures provided in NE's in-combination assessment for Tier 1 and Tier 2 projects which have been consented or under construction. This is on the basis that the figures presented in the assessment are sourced from predictions of mortality at the planning application stage based on a worst case Rochdale envelope approach to turbine layout i.e. a large number of small turbines. The applicant submits that at the detailed design or construction stage the developer has opted for a small number of larger turbines which would result in a reduced collision risk. Whilst not substantiated with hard evidence, the applicant cited a list of cases where such a reduction has in applicant's view occurred, including the London Array, Kentish Flats, Humber Gateway, Westernmost Ruff, Dudgeon and Galloper offshore wind farms. Therefore in the applicant's view the figures put forward by NE represent an overestimate for a number of Tier 1 and Tier 2 projects. At this stage no evidence has been submitted to the examination in support of this statement.

Subsequent to the Issue Specific Hearing on 4 December 2013, and in response to NE's in-combination assessment, the applicant presented its own assessment of in-combination effects on gannet for the FHBC SPA population (Written Response to Deadline XI. Additional Clarification on Ornithology. 10 December 2013. (Doc Ref: REP-565)).

The assessment has been carried out through the preparation of 'tiered approach' tables based on the list of projects supplied by NE. However the applicant's assessment applies a different ordering of offshore wind farms based on when consent was received or is expected to be received, rather than in order of submission date. This approach is considered by the applicant to be most relevant to the decision making process (Paragraph 19). The applicant's assessment concludes that:

- applying an avoidance rate of 99% neither the lower nor the upper PBR threshold has been exceeded by those projects that have been constructed or consented, or have an expected date for the consent decision up to the proposed Rampion OWF, in the 'tiered approach'. The applicant concludes that the proposed Rampion OWF along with other relevant OWFs in the North Sea and English Channel will not have an adverse effect on the integrity of the gannet population that is an interest feature of the FHBC SPA. (Paragraph 27)
- applying a 98% avoidance rate the lower PBR threshold has just been equalled by those projects that have been constructed or consented, or have an expected date for the consent decision up to the proposed Rampion OWF, in the 'tiered approach' table. The upper threshold has not been reached. However, the applicant states that this assessment is over-precautionary on the basis that a 98% avoidance rate is more precautionary than the evidence justifies (note the applicant has not elaborated on which evidence this comprises); that the assessment is based on the worst case Rochdale Envelope; and a number of the constructed and consented wind farms are known to have been, or are planned to be constructed, using a turbine array layout that is less

than this worst case. On this basis the applicant concludes that the proposed Rampion OWF along with other relevant OWFs in the North Sea and English Channel will not have an adverse effect on the integrity of the gannet population that is an interest feature of the FHBC SPA. (Paragraphs 28-30)

It is noted that if all Tier 1-6 projects presented in Tables 6 and 7 of the applicant's assessment are included, there is a total predicted accumulated mortality for gannet at the FHBC SPA of 532 (all birds) and 399 (adult birds) applying a 99% avoidance rate, and 1063.9 (all birds) and 797.6 (adult birds) applying a 98% avoidance rate. This is against a lower PBR of 286 adult birds and an upper PBR of 361 adult birds. (Written Response to Deadline XI. Additional Clarification on Ornithology. 10 December 2013. (Doc Ref: REP-565)).