

## SPR EA1N and EA2 PROJECTS



### DEADLINE 5 – POST HEARING SUBMISSIONS (ISH6)

**Interested Party:** SASES      **IP Reference Nos.** 20024106 and 20024110

**Date:** 3 February 2020      **Issue:** 1

1. These submissions are made following Issue Specific Hearing 6 which took place on Friday 29 January 2021.
2. At Deadline 4 The applicants provided comments on SASES written representations submitted at Deadline 1 concerning the draft DCO. The applicants also submitted a revised draft DCO at Deadline 3. This submission should be regarded as SASES' response both to the draft DCO submitted at Deadline 3 (in addition to its comments at Deadline 4) and to the applicants' comments on SASES written representations on the draft DCO.

#### **Introductory matters**

3. It was noted at the outset that SASES will wish to make further submissions once the revised dDCO is submitted at D5. SASES expressed concern about the use of the EA1 DCO as a precedent, because it is not accepted that it is a comparable project in terms of its onshore impacts and in particular at the substation site at Friston – see further post hearing submission in respect of ISH5.
4. SASES emphasised an important preliminary point about the interaction between two projects, and the interaction between the SPR infrastructure and the National Grid infrastructure. There is an overarching structural concern about the DCOs potentially authorising the separate construction of the National Grid infrastructure. This needs to be considered. The dDCO also now recognise that the National Grid infrastructure may indeed be delivered under other cumulative schemes through the revised requirement 38, despite the applicants maintaining that other schemes at Friston do not need to be the subject of cumulative assessment. This is clear evidence of the need to consider cumulative impacts.
5. There is a further concern, exposed perhaps by new requirement 42, as to the interaction between the three NSIPs and the possibility and risks associated with sequential development of the two SPR projects under the two DCOs for which consent is sought. These points require further consideration in the dDCO.

#### **dDCO articles**

6. Article 2: SASES shares concerns raised by ESC as to the breadth of the definition of "onshore preparation works". In the Friston area there are identified "pre construction" site accesses and whilst highway alterations have been excluded from the definition of onshore preparation works, the creation of site accesses has not. Those accesses are significant, as shown Works Plans. Another issue with the breadth of "onshore preparation works" is

the potential for interferences with public rights of way under those works, before the CoCP or public rights of way strategy has been approved.

7. SASES is also concerned about the scope of “maintenance” and possibility of alterations being carried out pursuant to that power, particularly where several NSIPs would be consented simultaneously with different undertakers operating the infrastructure (National Grid, and potentially two different windfarm undertakers).
8. Article 7: SASES referred to its written representations on the defence to a claim for nuisance. The Article should require the undertaker to demonstrate that best practicable means have been used to avoid the nuisance. As framed, the Article sets the wrong threshold (“reasonably be avoided”). SASES has explained that there is a serious concern about the workability of the applicant’s operational noise mitigation proposals. The enforcing authority needs to have a means by which it can require the undertaker to improve its mitigation measures. The noise limits in requirements 26 and 27 are blunt tools which have workability and enforceability problems.
9. Secondly, although there is reference to s 61 consents, as noted in ISH4 this is a case where (exceptionally) the CoCP does not require the undertaker to obtain such a consent. SASES maintains that using s 61 consents is appropriate and reasonable in the circumstances, allowing detailed control of construction noise and other impacts.
10. Article 11: SASES noted that there is no provision to prevent the sequential temporary closure of public rights of way in the event that the projects proceed sequentially. This issue is addressed in requirement 42 only to a limited extent, and more extensive consideration needs to be given to the point to ensure that disruption is minimised.
11. Article 33: SASES is concerned about the scope for permitted development rights that would arise from the deeming of the development area to be “operational land” for the undertaker. Given the substantial area of land involved (and potentially excessive land take) a large amount of land could potentially become operational land. That is a particularly acute issue at the National Grid substation and related infrastructure, where it is known that further projects would come forward as part of what would be in essence a connection hub. This, together with the substantial land take at Friston, would allow potentially very extensive works. It is essential that land which is ultimately not required for the substations is not treated as “operational land”. The rights in respect of land which exceeds the ultimate requirements of *these* projects should fall away.

### **Schedule 1**

12. SASES emphasised its general concern about the two separate NSIPs in each DCO. If granted, the DCOs would authorise the two windfarm NSIPs and (twice) the National Grid NSIP. The concerns are about how those projects come forward, and whether they proceed sequentially, but also about whether the National Grid NSIP could proceed separately.
13. SASES also explained that the absence of a “floor” on generating capacity creates a risk, which materialised at EA1, that the generating capacity which is ultimately achieved is materially less than that which was used to justify the application for development consent. Accordingly, the harm caused by the DCOs could occur without the delivery of the claimed benefits. The dDCOs need to prevent the projects from proceeding unless they will deliver

energy generation at or around that proposed. The descriptions should be amended to refer to “at least...” a certain level of energy generation, with a corresponding requirement to ensure that the project does not proceed without that level of generating capacity being planned to be delivered.

14. There is also a need for further coordination between the two DCOs, along the lines of requirement 42.
15. The access road is identified in the description of all three NSIPs so in essence the applicants seek authority four times over to construct the same road. It is important to understand when that access road will come forward and for what purpose. In particular there seems to be no reason why it cannot be identified as part of only one NSIP and requiring that it cannot be used for construction purposes (delivery of 4 AILS aside) either for these projects or any subsequent projects.

### **Schedule 3**

16. Requirement 1: there needs to be a means of determining which DCO is being implemented at any particular time.
17. Requirement 12: SASES endorses the ExA’s suggestion that this requirement should be broken down for the purposes of clarity and reserves its position to revisit this requirement once that point is addressed by the applicants. It was also noted that the parameters in requirement 12 have been the subject of separate representations, as have the design principles. These points still need to be addressed by the applicants.
18. Requirements 14 and 15: the landscaping requirements should contain on their face an obligation to retain and maintain the landscaping which is provided in a manner which will enable the optimistic growth rates to be achieved. As drafted there is no such obligation. The same point can be made in respect of the drainage scheme. The tree and shrub replacement obligation is insufficient alone, and it is necessary to impose an obligation to retain and maintain the landscaping throughout the currency of the project and for so long as the structures remain in the landscape (whether or not they are operational) to ensure the landscaping commitments serve their purpose.
19. Requirement 22: SASES has made a number of submissions on the contents of the CoCP. For the framing of requirement 22, it is important in particular that the site drainage provisions for the construction phase are addressed since at present there is no detail of how flood risk will be addressed in the construction phase. SASES referred to the evidence of Mr Carpenter given at ISH4.
20. Requirements 23 and 24: the construction hours are excessive. The works are proposed in a tranquil area, and it is obviously inappropriate for works to start at 7am. The starting point for other major projects is 8am – 6pm, and if that is suitable for e.g. HS2, then there is no reason why it cannot be followed in this case. There is no case for allowing routine Saturday morning working, particularly in a rural area close to residential receptors. Saturday morning working should be dealt with, as necessary, under the exceptions provided for in these requirements.
21. Requirements 26 and 27: please see at Appendix 1 proposed amended requirements in respect of operational noise.

22. Requirement 32: the public rights of way strategy should be the subject of public consultation before it is approved by the relevant authority.
23. Requirement 38: the amendment to this requirement exposes the likelihood of other projects coming forward at Friston which require assessment. It also confirms the need for clarity as to the other elements of the projects which are duplicative, to ensure that they proceed under only one of the DCOs.
24. Requirement 41: there should be an obligation to retain and maintain the operational drainage infrastructure.

### **Other Schedules**

25. Schedule 15: SASES echoes the concern of the ExA about the suitability of arbitration provisions for a DCO. There is uncertainty as to what disputes would be referred to arbitration given that approvals are dealt with under Schedule 16, and issues relating to compensation via the Lands Tribunal. SASES is concerned about the provision in paragraph 7 of Schedule 15 which would require the arbitral proceedings to be conducted in secret, since they would be concerned with the development of a NSIP with significant local impacts.
26. Schedule 16: the omission of any obligation to consult the public on the discharge of requirements is significant and should be addressed. The documents should be made available to the public as soon as they are submitted to the approving authority and time should be allowed for consultation. That is particularly the case in respect of the major design elements such as the substations, landscaping, drainage and public amenity issues such as PRowS.

## APPENDIX 1

### Amended Requirements 26 and 27

#### Control of noise during operational phase

**26.**—(1) The noise rating level for the simultaneous operation of Work Nos. 30, 38 and 41 must not exceed 30 dB L<sub>Ar,Tr</sub> at any time at any residential property and at St Mary the Virgin Parish Church when such Work Nos are operating at full rated capacity.

(2) The noise rating level shall be determined as defined in BS 4142:2014+A1:2019 and the noise rating level shall only apply in respect of residential properties which were constructed or were granted planning permission by no later than 31 December 2020. For the avoidance of doubt Annex D to BS 4142:2014+A1:2019 shall apply in respect of assessing tonal penalties.

(3) Whether works numbers 30, 38 and 41 are operating at full rated capacity shall be assessed by reference to independently verified data for the periods during which monitoring is being conducted pursuant to paragraph 26(4).

(4) Work Nos. 30, 38 and 41 must not begin operation until a scheme for monitoring compliance with the noise rating level set out in paragraph 26(1) above has been submitted to and approved by the relevant planning authority after consultation with Friston Parish Council. Without prejudice to the requirement that the noise rating level must not be exceeded at any time at any residential property, the scheme must include identification of suitable monitoring locations (which shall include without limitation SSR2, SSR3, SSR5 NEW and St Mary the Virgin Parish Church) which the local planning authority, acting reasonably, shall be entitled to change both in terms of number and location at any time) and times when the monitoring is to take place (which the local planning authority, acting reasonably, shall be entitled to change at any time) to demonstrate compliance with the noise rating level set out in paragraph 26(1):

(a) immediately after initial commencement of operations;

(b) six months after Work Nos. 30, 38 and 41 are at full operational capacity;

(c) following each anniversary of the initial commencement of operations; and

(d) at any other time if the local planning authority has reasonable grounds to believe that the noise rating level set out in paragraph 26(1) is not being complied with.

(5) The monitoring scheme must be implemented as approved.

#### Control of noise during operational phase cumulatively with East Anglia TWO onshore substation

**27.**—(1) The combined noise rating level for the simultaneous operation of Work Nos. 30, 38 and 41 cumulatively with the operation of the East Anglia TWO onshore substation must not exceed 30 dB L<sub>Ar,Tr</sub> at any time at any residential property and at St Mary the Virgin Parish Church when such Work Nos and the East Anglia TWO onshore substation are operating at full rated capacity.

(2) The noise rating level shall be determined as defined in BS 4142:2014+A1:2019 and the noise rating level shall only apply in respect of residential properties which were constructed or were granted

planning permission by no later than 31 December 2020. For the avoidance of doubt Annex D to BS 4142:2014+A1:2019 shall apply in respect of assessing tonal penalties.

(3) Whether works numbers 30, 38 and 41 and the East Anglia TWO onshore substation are operating at full rated capacity shall be assessed by reference to independently verified data for the periods during which monitoring is being conducted pursuant to paragraph 27(4).

(4) Work Nos. 30, 38 and 41 must not operate at the same time as the East Anglia TWO onshore substation until a scheme for monitoring compliance with the noise rating levels set out in paragraph 27(1) above has been submitted to and approved by the relevant planning authority after consultation with Friston Parish Council. Without prejudice to the requirement that the noise rating level must not be exceeded at any time at any residential property, the scheme must include identification of suitable monitoring locations (which shall include without limitation SSR2, SSR3, SSR5 NEW and St Mary the Virgin Parish Church) which the local planning authority, acting reasonably, shall be entitled to change both in terms of number and location at any time) and times when the monitoring is to take place (which the local planning authority, acting reasonably, shall be entitled to change at any time) to demonstrate compliance with the noise rating level set out in paragraph 27(1):

(a) immediately after initial commencement of operations of Work Nos. 30, 38 and 41 and the East Anglia TWO onshore substation both operating at the same time;

(b) six months after both Work Nos. 30, 38 and 41 and the East Anglia TWO onshore substation have been operating cumulatively at full capacity;

(c) following each anniversary of the initial commencement of operations of Work Nos. 30, 38 and 41 and the East Anglia TWO onshore substation both operating at the same time; and

(d) at any other time if the local planning authority has reasonable grounds to believe that the noise rating level set out in paragraph 27(1) is not being complied with.

(5) The monitoring scheme must be implemented as approved.

(6) For the purposes of this requirement “East Anglia TWO onshore substation” means the onshore substation comprised within Work No. 30 of the East Anglia TWO Order.