

Application by Rampion Extension Development Limited (RED) for an Order Granting Development Consent for the Rampion 2 Offshore Wind Farm (Project Reference: EN010117)



Adequacy of Consultation Representation

West Sussex County Council

August 2023

1. Executive Summary

- 1.1 This representation provides a response by West Sussex County Council (WSSC) to the Adequacy of Consultation request by the Planning Inspectorate (PINS) with regards the Rampion 2 Offshore Wind Farm.
- 1.2 It is understood that it is for PINS to determine whether the Applicant has complied with the requirements of the Planning Act 2008 (the 'Act') in order to accept the DCO application. It is the view of WSSC that the Applicant has complied with the statutory requirements set out in Sections 42, 47 and 48 of the Act for the reasons set out within this representation.
- 1.3 This response has also looked at the wider issues of consultation and compliance with guidance and advice on the pre-application process, to review the quality of the consultation and engagement process under Sections 49 and 50 of the Act. WSSC has concluded that although the Applicant has met the requirements of Section 49 of the Act, some elements of guidance stated under Section 50 has not been met by the Applicant.
- 1.4 Therefore, WSSC consider that the application should be accepted, PINS should ensure that adequate time is allowed to address the matters of concern raised by WSSC in the pre-examination period.

2. Introduction

- 2.1 WSSC was notified on 11 August 2023 by PINS, that Rampion Extension Development Ltd (the 'Applicant') has submitted the Rampion 2 Offshore Wind Farm (the 'Project') application for Development Consent. WSSC welcomes the inclusion of the appended Rampion 2 Offshore Wind Farm Consultation Report (Document Reference 5.1 Revision 01) for reference, and to aid the development of this response. It should be noted that WSSC received this report from the Applicant upon submission to PINS. WSSC acknowledges that PINS has until 7 September 2023 to determine whether to accept the application, during which time WSSC has until 25 August 2023 to submit a representation regarding the pre-application consultation.
- 2.2 This Adequacy of Consultation Representation only sets out the views of WSSC and it has not been submitted on behalf of any other authority in West Sussex. This Representation does not set out WSSC's views on the merits or otherwise of the application for development consent for the Project. If the application is

accepted, those views will form part of any Relevant Representation, Local Impact Report, and other Written Representations submitted during the pre-examination and examination stages.

- 2.3 As requested in PINS's letter of 11 August 2023, this response outlines whether, in the opinion of WSCC, the Applicant has complied with the following sections of the Act;
1. Duty to Consult – Section 42;
 2. Duty to Consult the Local Community – Section 47; and
 3. Duty to Publicise – Section 48.
- 2.4 Although it is understood that Section 55 (5) of the Act defines adequacy of consultation as "...a representation about whether the applicant complied, in relation to that proposed application, with the applicants duties under sections 42, 47 and 48", WSCC also wishes to highlight certain aspects of the wider engagement process, particularly under Section 49 (Duty to take account of responses to consultation and publicity) and Section 50 (Regard to guidance issued by the Secretary of State about the pre-application procedure) of the Act (as amended) and further details are given within this representation.
- 2.5 Before each of these are discussed, WSCC wishes to outline the rounds of consultation and technical engagement undertaken by the Applicant through the pre-application stage:
- 2.6 Consultation events:
- Non-statutory (informal consultation) on the onshore elements of the project only (14 January to 11 February 2021);
 - Statutory consultation on the whole project (14 July to 16 September 2021);
 - Statutory consultation (whole project) open to coastal zone residents (7 February to 11 April 2022);
 - Targeted statutory consultation on additions/alterations to the onshore cable route only (18 October to 29 November 2022);
 - Targeted statutory consultation on a further additional onshore cable route (24 February to 27 March 2023); and
 - Targeted statutory consultation on enabling works at the National Grid substation (28 April to 30 May 2023).
- 2.7 It should be noted that the Consultation Report also states that further Section 42 consultation regarding minor highways and access changes in February to April 2023 was undertaken, including consulting WSCC (by virtue of WSCC's interest in the land as the local highway authority). WSCC can confirm the relevant letters were received during the timescales stated by the Applicant.
- 2.8 Technical and community engagement:
- The Applicant undertook technical engagement with stakeholders through an Evidence Plan Process (EPP) approach, where a set of Terms of Reference (ToR)

were agreed, and a process followed where five rounds of Expert Topic Groups (ETGs) were held, for both onshore and offshore topics. In between these, some meetings were held on topic specific issues with WSCC;

- In addition to the topics specific ETGs, the process was led by a Steering Group, with an independent chair to oversee the process and ensure the ToR were adhered to;
- Meetings to discuss the scope of the Draft Statement of Community Consultation (SoCC) for the first two rounds of statutory consultation (meetings held in April 2021 and May 2022 respectively);
- Monthly progress meetings with the Applicant (commenced in May 2022);
- Public Liaison Groups – these groups were defined early in the pre-application process by the Applicant, where WSCC was asked to help identify local stakeholders to join these groups (engagement held with WSCC in September 2020);
- WSCC Members briefings; and
- Cowfold Information Day – information sharing only event with the local community regarding the onshore substation construction and operation.

2.9 In preparing this representation, WSCC has had regard to the Consultation Report prepared by the Applicant, its records of communications with the Applicant during the EPP, and records of representations submitted to WSCC by members of the public and local groups, relating to consultation activities and levels of engagement during the pre-application stage.

2.10 WSCC have addressed each section of the Act separately for clarity.

3. Duty to Consult – Section 42 of the Act

3.1 Requirements under the Act:

The applicant must consult the following about the proposed application –

1. *Such persons as may be prescribed;*
2. *Each local authority that is written in section 43;*
3. *The Greater London Authority if the land is in Greater London; and*
4. *Each person who is within one or more of the categories set out in s. 44. Subsection a) refers to 'such persons as may be prescribed'.*
5. *When consulting a person under section 42, section 45 requires the Applicant to notify the person of the deadline for the receipt of the person's response and this deadline must not be earlier than 28 days after the consultation documents are received.*

3.2 WSCC response:

1. These persons are listed in Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. A list of those consulted has been provided in Appendix 4.2, 6.2, 7.2 and 8.2 of the

Consultation Report and complies with those of relevance listed in Schedule 1.

2. The Applicant has provided a list in Appendix 4.2, 6.2, 7.2 and 8.2 of the Consultation Report, of Local Authorities consulted on the application, which includes WSCC. WSCC confirms they were consulted by the Applicant on all of the consultation phases as listed in paragraph 2.6 of this response.
3. There is no requirement to consult Greater London Authority as the Order Limits of Rampion 2 do not fall within Greater London.
4. This subsection required the Applicant to consult each person who is within one or more categories set out in section 44, including owners, tenants or occupiers of land included within the boundary of the order limits or those with an interest in the land or with a power to sell or convey the land. Details of the landowner and statutory undertaker consultation has been provided in the Consultation Report in sections 5.3 to 10.3. The number for consultees in each category (1,2 and 3) is not identified, but does provide an example of the letter circulated to these parties (including WSCC). Without having sight of the Book of Reference (Application number 4.3) to establish the full list of persons that would fall within Section 44, WSCC is not in a position to confirm or otherwise.
5. WSCC can confirm that this requirement for at least a 28-day period was met for each round of statutory consultation held.

3.3 WSCC is of the view that the Applicant **has** complied with its duties under Section 42 of the Act. However, note should be made that confirmation cannot be given on those consulted under Section 44, as the relevant detail is not provided in the Consultation Report.

4. Duty to Consult the Local Community – Section 47 of the Act

4.1 Requirements under the Act:

- 1) *The applicant must prepare a statement setting out how the applicant proposes to consult, about the proposed application, people living in the vicinity of the land.*
- 2) *Before preparing the statement, the applicant must consult each local authority that is within section 43(1) about what is to be in the statement.*
- 3) *The deadline for the receipt by the applicant of a local authority's response to consultation under subsection (2) is the end of the period of 28 days that begins with the day after the day on which the local authority receives the consultation documents.*
- 4) *In subsection (3) "the consultation documents" means the documents supplied to the local authority by the applicant for the purpose of consulting the local authority under subsection (2).*
- 5) *In preparing the statement, the applicant must have regard to any response to consultation under subsection (2) that is received by the applicant before the deadline imposed by subsection (3).*

- 6) *Once the applicant has prepared the statement, the applicant must publish it- 1. In a newspaper circulating in the vicinity of the land, and 2. In such other manner as may be prescribed.*
- 7) *The applicant must carry out consultation in accordance with the proposals set out in the statement.*

4.2 WSCC response:

- 1) The Applicant prepared two Statements of Community Consultation (SoCC) for statutory consultation held in summer 2021 and autumn 2022, as detailed in paragraph 2.6 of this response. This set out how they proposed to consult with people living in the vicinity of the land. These has been provided as Appendix 4.1 and 6.1 to the Consultation Report. The Applicant gave WSCC both informal and formal opportunities to comment on both Draft SoCCs. Formal feedback was given to the Applicant within the consultation period timescales. The preparation and consultation on both SoCC indicates that subsections (1), (2) and (3) of Section 47 has been met. It should be noted that new SoCC was not produced for targeted consultations held in late 2022 and 2023, as previous SoCCs provided an allowance for subsequent rounds of targeted consultation. The Applicant informed WSCC of these additional targeted rounds of consultation and how methods would be used from the developed SoCC.

- 5) The Applicant provided some feedback on the responses made by WSCC on the draft SoCC, provided by WSCC, in April 2021 and May 2022 respectively. See Table 1 below for further details on key points raised by WSCC and the regard given by the Applicant to these comments. With regard to the first round of project wide consultation, the Applicant has not included the full set of SoCC WSCC comments; however, they have provided feedback during the process on these comments, in an email referenced in Table 1.

Table 1: Draft SoCC feedback and Applicant responses	
WSCC feedback	Applicant Response
SoCC April 2021	Email 8 June 2021
<p>Consulting during the covid-19 pandemic and lack of face to face engagement - WSCC again reiterate consultation should enable as many people as possible to actively engage in the process, be COVID-19 safe and adhere to guidelines, but recognising that a wide range of audiences need to be positively engaged using a range of consultation tools. It will be important to be clear to the public what the government guidelines are saying regarding developer consultation with the public during the pandemic. Reference to the covid road map should be made, there will be sections of the community who feel this should be paused until face to face consultation can be carried out, or others who will question if</p>	<p><i>'Firmer commitment to engagement with Parish Councils and virtual public events.</i></p> <p><i>A number of respondents requested that we make a stronger commitment to face-to-face activities. In order to ensure that our SoCC is compliant during this uncertain time, we have updated our wording to allow for small-scale, in-person, outdoor meetings and community engagement methods having regard to</i></p>

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WSCC feedback	Applicant Response
the current road map is suggesting potential step 4 in late June, why community consultation will be virtual if it runs past this period into the summer months.	<i>Covid-19 guidelines for safe working practices</i> . The Applicant held two 'pop up' events outside during this consultation period along the coastal zone.
Consultation timelines. WSCC understands that this is being considered separately, but we reiterate the comments with regards a 12 week period for section 42 consultation rather than minimum of 8 weeks as currently stated. 8 weeks will significantly restrict the authorities' ability to fully engage Members in the process and to allow for local authority internal governance (i.e., officer review and preparation of report to members and member sign-off), and for members of the public to be given enough time to fully engage in the process.	<i>'Our commitment to extend the community consultation period from 6 to 9 weeks'</i> . It was not extended by the 12 weeks requested.
Clarity on consultation zones - Who will be consulted – The zone approach coupled with the wider area inclusion is welcomed. We would suggest some justification on the boundaries of these zones however, e.g., 3km for the substation and 1km for the outer cable corridor, whether that is reference to the key study areas or ZTVs etc. With regards Zone 3 and the suggested 100m from the Sussex Coastline, communities which live and work along this section of the coastline will be very important to consult. How has this 100m distance 'from the coastline' been decided? Can reference to this be included in the text?	<i>'A map of our consultation zones'</i> – addition of consultation zones with defined buffers, however no justifications for the size of these buffers have been given to date.
Removing barriers to participation. A key barrier will be groups who wish to discuss/understand things face to face, which with the current restrictions will be difficult to achieve. Offering opportunities for one to one virtual meetings/telephone consultations will play an important part of the consultation process.	<i>'RED held one to one virtual meetings/telephone consultations during this consultation period'</i>
SoCC May 2022	Email 26 October 2022 and contained within the Consultation Report
Community messaging - There is the need for clearer messaging to the community on why formal consultation is only being held for the onshore cable route and not for the substation options or offshore elements.	<i>'Added additional information on why the consultation focuses on the onshore elements of our proposals'</i> .

Table 1: Draft SoCC feedback and Applicant responses	
WSCC feedback	Applicant Response
Will there be a report documenting the formal analysis of responses from the previous round of consultation included within the consultation materials?	<i>'Added more information on how feedback is taken into account and produced a 'Feedback to the Statutory Consultation' document'</i>
Timeline: the time period for the planned consultation is proposed to be 5 weeks, just over the minimum 28 days period required. This needs to be considered further. Timescales for consultation needs to take into account the complexity of the project elements being presented (and the complexity of the messaging) and a longer consultation period should therefore be considered to allow for this. WSCC suggests at least a 6 week period for this consultation.	<i>'The consultation length has been extended beyond the 28-day minimum to 6 weeks. It is no longer taking place during the summer but has been moved to autumn'.</i>
Libraries – as per my email on 8th April 2022, can you confirm the list of libraries that will be included, and whether hard copies will be deposited there?	<i>'Added the list of libraries when documentation is available for inspection'.</i>
Materials: It was explained there would be a PEIR Supplementary Information Report (SIR) outlining the additions to the onshore cable route for review, alongside community focused fact sheets. WSCC have queried what additional technical information will be presented (either updated to reflect the consultation, or new to reflect some of the missing baseline information, that was requested at the PEIR stage). Further clarification on this would be useful.	<i>'A link was provided to the technical documentation presented'. No further justification on why additional technical documentation was not included.</i>
Face to Face events: with the lifting of COVID restrictions, we welcome the inclusion of face to face events as a method for consultation. With this being the first instance some members of the community have had to meet face to face with RED, how will this be addressed/managed by this round of consultation ? Consideration should be given to the messaging/materials provided to the wider community and what would/could be presented at these events to help signpost anyone coming to discuss the onshore substation or offshore turbines.	<i>'Added additional information on why the consultation focuses on the onshore elements of our proposals'.</i>
Contact us – can it be clear what hours the freephone information line will be open from? Will this be staffed or a recorded message? Will the public have a freepost address to send written comments to ?	<i>'Added the opening hours to the freephone number. And to clarify, the call line is staffed. Made a freepost address available to the public so they can respond via post without charge'.</i>

- 6) The Consultation Report details the publishing of the SoCC for both rounds of consultation in relevant newspapers for the required length of time (section 5.5 and 6.5 of the Consultation Report).
- 7) Subsection 7 requires the Applicant to undertake the consultations in accordance with the SoCC. There was one element in the summer 2021 consultation that was not undertaken in accordance with the published SoCC. This was reported to WSCC, indicating that posting of consultation leaflets to coastal zone residents was not undertaken due to an error in royal mail delivery. This was rectified with correct posting to these residents and a re-run of the online consultation event, (including access to all consultation materials) during the period of 7 February to 11 April 2022. Consultation was undertaken as detailed within the relevant published SoCC, although concerns were raised that face-to-face events were limited (only two pop up events were held) during the summer 2021 statutory consultation. The error in materials not being posted to coastal communities was rectified with another round of statutory consultation undertaken between 7 February to 11th April 2022. The Consultation Report has not fully presented the SoCC comments made by WSCC for the first round of project consultation, however this was discussed with the Applicant through the process, and written feedback was given at the time.

Third Party Representations

4.3 WSCC has been contacted by a number of local groups and members of the public during the pre-application period regarding concerns over the promotion of consultation events, quality of consultation materials and lack of feedback by the Applicant on how they have addressed the concerns raised. WSCC is aware that many have contacted PINS and the Applicant directly to raise these concerns. A list of key issues has been included within Table 2 below, further details can be found in Appendix 1, which gives an overview of the quantum of representations WSCC have received and considered when preparing this representation.

Table 2: Third Party Representations to WSCC	
Organisation	Overview of concerns raised
Littlehampton area Community Organisations (Members of the East Beach Residents Association, Littlehampton Society) and other local residents	<ul style="list-style-type: none"> • Failure of the Applicant to directly notify all people and groups with property in the Coastal Area (Zone 3, 100m from the coastline) about the consultation by mail, as provided in the Applicant’s statutory SoCC; compounded by failure to be inclusive in defining Coastal Area Zone 3; • Concerns over defining only 100m from the coastline for Zone 3, concerns this excluded communities who would feel the visual effects of the proposals; • Failure of the Applicant to react to evolving social distancing guidelines and adapt their consultation approach, as specified in the statutory SoCC; compounded by documented reluctance of the Applicant to co-operate in good faith with host community initiatives that did; • The absence of visual animations and adequate static representations of turbines in virtual engagements and in

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Organisation	Overview of concerns raised
	<p>on-line videos that the PEIR offered as a basis for consultations; compounded by the failure to meet standards for "Visual Representation of Wind farms" (SNH, 2017) which the Applicant says were followed;</p> <ul style="list-style-type: none"> • The visual representations were not very accessible; • The Applicant was also selective in taking account of consultation responses; • Littlehampton Civil Society Organisations (CSOs) offered input to the developer's SoCC and to hold the community-led meeting (in person, inviting the Applicant to participate). It helped to clear up key misconceptions about what was proposed, where only a few residents were aware of the planning and technical issues and how they were being presented by the Applicant. It undermined the very aims of pre-application consultations as provided in Government advice (MHCLD, 2015); • Offering a narrow socioeconomic desk study on which consultations were framed using selected out-of-date research studies on attitudes to windfarms, instead of undertaking actual resident and visitor surveys; and • General failure to meet the standards of consultation envisaged in the relevant government guidance (MHCLG, 2015) in this experiment with virtual / digital only community consultation, given the DCO regime front-loads consultations into the pre-application stage.
Middleton-on-Sea Coastal Alliance (MOSCA)	<ul style="list-style-type: none"> • Concern over a large number of households who would be included under Zone 3, have not received any information from the Applicant in respect of Rampion 2, and therefore the consultation has not met its requirements and the formal consultation deadline of the 16 September 2021 needs to be extended for a further six weeks to enable these householders to review the proposals for Rampion 2 and to decide if they wish to support or object to the Project; • The consultation process was started during full lockdown on the 14 of July to run only to 16 September 2021. Without reasonable access the publicity of the public survey was poor and by the time local public meetings (organised by the Parish Councils), were arranged the time was short to engage with the project and 'get to grips' with the survey; • The consultation was not inclusive. It did not allow for sight impaired residents taking part, nor written letters being accepted as official survey comments; • Surveys were required to be filled in online which, in areas of older residents, made the number of replies less likely. Those surveys had to be double-confirmed as proof of identity which was not made clear in the document – we have confirmed information of residents who failed to confirm their survey;

Table 2: Third Party Representations to WSCC	
Organisation	Overview of concerns raised
	<ul style="list-style-type: none"> Difficulties speaking to the Applicant on the phone about filling in the survey. The survey process was repetitive and over technical; and Reiterated the conditional acceptance actions (as stated below from Protect Coastal Sussex).
Protect Coastal Sussex	<ul style="list-style-type: none"> Failure to carry out pre-application consultations with the local community in line with the SoCC commitment to contact all residents and properties within 100m of the shore, even after the second attempt in February to April 2022; At this time, also failed to shift to more face to face events and stuck with virtual methods only; Not adequately taking into account or having regard to responses to consultations, based upon the absence of detail and highly superficial nature of the 'Initial Consultation Report' issued; and If acceptance is given by PINs, there should be conditions associated with it, whereby further actions should be undertaken by the Applicant in the pre-examination phase. Actions such as undertaking further consultation (include re-opening the substation consultation), making public specific assumptions, models and detailed analysis of further materials for scrutiny.
Other coastal residents	<ul style="list-style-type: none"> Lack of publicity, namely too few posters around the coastal zone making residents and visitors aware of the proposals; Lack of leaflets to the coastal zone; Requested extension of the consultation by 3 months and that the Applicant communicate wider across the Sussex Bay area, so that residents and businesses are fully informed to make a decision on how it impacts them and whether they want to respond to the consultation; and Consultation materials failing to address the significant increase in size of these proposals versus current Rampion 1 Project.
CowfoldvRampion, Cowfold residents directly affected by the Oakendene substation proposals (residents of Picts Lane, Kent Street, Moatfield/Kings Lane and A272 adjacent to the proposed substation) and some members of the wider Cowfold community	<ul style="list-style-type: none"> The lack of adequate consultation, resulting in a low level of awareness and understanding of the project in the communities surrounding the Oakendene substation, including those directly affected and the wider residents of Cowfold; Ineffective nature of the publicity and insufficient efforts to distribute materials; Disconnect between what residents received and what the Applicant has evidenced was sent out, including to those most affected by substation proposals; Failed in their duty to engage properly with the community and failed to make their publicity truly informative or easy to understand; Materials not been delivered in a timely manner, and by its poor presentation and lack of clarity, failed in its obligation

Table 2: Third Party Representations to WSCC	
Organisation	Overview of concerns raised
	<p>to meet the requirements to give sufficient information to allow intelligent consideration and influence plans;</p> <ul style="list-style-type: none"> • No public meetings held, no posters or documents for perusal during the whole project consultation in summer 2021; • Those most affected should have been most involved from the very outset of the process; • Some of those who tried to respond to the consultation online failed to be able to complete the process (the online form required a two-step confirmation via email, which also reduced the number of successful submissions); • The leafleting of Zone 1 residents seems to have been patchy and only at the eleventh hour; • The Applicant did not provide enough detail to "enable consultees to develop an informed view of the proposed development" or provide "clarity to all consultees"; • No returning of residents calls made to the designated RWE number during the summer consultation; • Confusion also over information sent to land owners by the land agent, and how this differed from community engagement; • Delivery of information even within the immediate area adjacent to the substation has been poor, including to those on the Oakendene industrial estate and those residents north of the A272; and • The consultation process has not complied with the requirements under the Planning Act 2008, sections 47-50. It has failed on all four gunning principles and therefore should be rejected to allow for more meaningful consultation to take place.
Cowfold Parish Council	<ul style="list-style-type: none"> • Ongoing concerns on behalf of residents as to the poor standards of the Applicants community communications strategy; • Certain residents in the Parish continue to feel that a paucity, or absence, of information has been disseminated within the community; • Questioning the protocols in respect of Cowfold residents and requested radically enhancing the standards of engagement seen to date; and • Highlighting feedback sent to them regarding lack of clarity in the leaflets received (by those that recalled receiving it). Confusion also over information sent to landowners by the land agent, and how this differed from community engagement; and • Confusing nature of the information included which some found difficult to understand.

4.4 WSCC has considered the concerns raised by stakeholders and although evidence outlined by the Applicant within the Consultation Report provides

confirmation that the Applicant **has** complied with its duties under Section 47 of the Act with regard to producing a SoCC and consulting under the terms of this document, WSCC considers that more engagement through the pre-application process (in the spirit of the Act) could have been undertaken, particularly with regards to those concerned parties referenced above. Sections 6 and 7 of this representation also provide more detail on this.

5. Duty to Publicise – Section 48 of the Act (as amended)

5.1 Requirements under the Act:

1. *The applicant must publicise the proposed application in the prescribed manner.*
2. *Regulations made for the purposes of subsection (1) must, in particular, make provision for publicity under subsection (1) to include a deadline for receipt by the applicant of responses to publicity.*

5.2 WSCC response:

- 1) The Consultation Report (Section 5.6 and Appendix 4.6 and Section 7.6 and Appendix 6.6) details where copies of the Section 48 notices were published.
- 2) The Section 48 notices detailed the deadline for the receipt of responses to the consultation events as required in subsection 2), which exceeded the minimum 28 days.

5.3 WSCC is of the view that the Applicant **has** complied with its duties under Section 48 of the Act.

6. Duty to take Account of Responses to Consultation and Publicity - Section 49 of the Act

6.1 Requirements under the Act:

1. *Section 49 (2) of the Act states that the applicant must, when deciding whether the application that the applicant is actually to make, should be in the same terms as the proposed application, have regards to any relevant responses.*
2. *Section 49 (3) states that in subsection (2) "relevant response" means:*
 - a. *a response from a person consulted under section 42 that is received by the applicant before the deadline imposed by section 45 in that person's case,*
 - b. *a response to consultation under section 47(7) that is received by the applicant before any applicable deadline imposed in accordance with the statement prepared under section 47; or*
 - c. *a response to publicity under section 48 that is received by the applicant before the deadline imposed in accordance with section 48(2) in relation to that publicity.*

- 6.2 Paragraph 80 of the MHCLG Guidance requires the Consultation Report to provide a description of how the application was informed and influenced by consultation responses, to outline any changes made as a result and to show how significant relevant responses will be addressed. The Consultation Report must also explain why responses advising on major changes to a project were not followed, including advice from statutory consultees on impacts.
- 6.3 Paragraph 81 of the MHCLG Guidance states that "it is good practice that those who have contributed to the consultation are informed of the results of the consultation exercise; how the information received by applicants has been used to shape and influence the project; and how any outstanding issues will be addressed before an application is submitted to the Inspectorate."
- 6.4 PINS Advice Note 14 states that it is particularly useful if applicants provide local authorities with early sight of the Consultation Report to inform their views, given the short 28-day timescale allowed for the acceptance stage and the 14-day timescale local authorities have to provide their adequacy of consultation response.
- 6.5 WSCC only received the Consultation Report (a total of 2,437 pages) upon submission of the DCO application by the Applicant, which was unhelpful. This was compounded by submission taking place during the summer holidays, which condensed the period for the Authority to respond given key staff being on leave.
- 6.6 Appendices 1 to 11 of the Consultation Report provide summaries of the issues raised at each round of consultation outlined in paragraph 2.6, and how the Applicant has had regard to the key responses received. Appendices 1-10 provides these issues in a thematic way, and have been grouped as general, crosscutting, offshore or onshore matters. These appendices also provide a project response and whether it has led to scheme change or not. Appendix 11 provides further information (per ES chapter) regarding comments made by statutory consultees and how they have been addressed through the project, and signposting to the ES.
- 6.7 WSCC submitted a substantial set of comments to the technical documentation at each round of consultation held. This consisted of a summary of overarching concerns and detailed technical comments in appendices. The responses included a number of requests for more detail and information to help WSCC understand the potential impacts of the Project, as well as seeking clarification on a number of methodological issues and suggestions for mitigation strategies.
- 6.8 Initial feedback was given by the Applicant on these responses through the ETGs held as part of the EPP. This did provide an opportunity to discuss the issues raised through the consultation, providing an iterative mechanism to allow better understanding and refinement of some, not all, areas of the proposals. However, although it is acknowledged that there were five rounds of statutory and one round of non-statutory consultation, it would have been beneficial to WSCC for the Applicant to specifically respond in writing to the large volume of WSCC consultation responses through the pre-application process, and ideally kept this recorded and tracked via an issues tracker.

- 6.9 WSCC considers that the Consultation Report is in accordance with the MHCLG Guidance and PINS Advice Note 14, and that the summaries provide an adequate representation of WSCCs principal areas of concern raised through the process. It should be noted that Appendix 11 provides signposting to the DCO submission documents, to show the regard given to WSCC's consultation responses. Although the Applicant has shared these documents with WSCC upon submission to PINS, this response does not include a review of the documentation given.
- 6.10 WSCC is not aware that there has been any information given to wider consultees on how the results of consultation have been used to shape and influence the application nor how any outstanding issues were to be addressed. The Applicant did produce an Informal Consultation Analysis Interim Report in July 2021; however, no further published reporting on community feedback has been given by the Applicant until the production of the Consultation Report. This has been raised as an issue by local community groups, especially with regards to the onshore substation decision, as detailed in Table 2.
- 6.11 Therefore, although concern has been raised about the lack of more formal written feedback to WSCC and other parties through the pre-application process (acknowledging feedback had been given through the EPP for WSCC and via limited analysis of consultation responses to the wider public), WSCC is of the view that the Applicant **has** complied with Section 49 of the Act and Paragraph 80 and 81 of the MHCLG Guidance.

7. Regard to Guidance Issued by the Secretary of State about the Pre-application Procedure – Section 50 of the Act

- 7.1 When deciding whether the Applicant has complied with Chapter 2 of Part 5 of the Act, the Secretary of State must consider the extent to which the Applicant has had regard to any guidance issued under section 50 of the Act. Guidance issued under Section 50 includes guidance issued by the Secretary of State about the pre-application procedure, such as the PINS Note 2 '*The role of local authorities in the development consent process*' (2015), Advice Note 14 (version 2) '*Compiling the consultation report*' (2012) and the MHCLG Guidance (2015).
- 7.2 The following sections address whether WSCC considers that the Applicant has had regard to various matters in the guidance.

Pre-application Consultation Process

- 7.3 Paragraph 19 of MHCLG Guidance states: "*The pre-application consultation process is crucial to the effectiveness of the major infrastructure consenting regime. A thorough process can give the Secretary of State confidence that issues that will arise during the six months' examination period have been identified, considered and, as far as possible, that applicants have sought to reach agreement on those issues*".
- 7.4 Paragraph 30 of the MHCLG Guidance recognises the role that "*local authorities play as bodies with expert knowledge of the local community, business and other interests as well as their responsibility for development of the local area*".

- 7.5 The Applicant undertook technical engagement with stakeholders, including WSCC, through an EPP approach, where a set of Terms of Reference were agreed, and a process followed where five rounds of ETGs were held, for both onshore and offshore topics. In between these, some meetings were held on topic specific issues with WSCC, which covered areas of principal concern and monthly progress meetings where project updates were given by the consents team.
- 7.6 The EPP was managed well by the Applicant, with a clear protocol agreed through the Terms of Reference for how ETGs were set up, when agendas and slide packs were issued, and when draft meeting minutes were circulated for agreement.
- 7.7 In addition to the topics specific ETGs, the process was led by a Steering Group with an independent chair to oversee the process and ensure the Terms of Reference were followed.
- 7.8 However, it should be noted that the Consultation Report did not cover in detail the technical engagement that was carried out with key stakeholders in the development of the proposals with the ETGs as part of the EPP. Although a summary of the process was included, the Evidence Plan (application reference 7.21 sets out this process in detail), which has not been reviewed as part of this representation.
- 7.9 Although the positive elements of the EPP have been outlined above, due to the number and structure of the rounds of consultation since 2021 regarding the onshore cable routing once the route had been fixed, the Applicant moved to a DCO submission in quick succession. This gave little opportunity for more detailed discussions on the final proposals, which would have allowed agreements to be reached and mechanisms for securing mitigations discussed.
- 7.10 Accordingly, WSCC consider that although the Applicant **has** had regard to the guidance on this matter, the engagement since the fixing of the onshore cable route in the months leading up to DCO submission have been less meaningful and could have been far more productive if further time had been allowed by the Applicant to discuss issues with WSCC.

Preliminary Environmental Information

- 7.11 Paragraph 93 of the MHCLG Guidance states: *"For the pre-application consultation process, applicants are advised to include sufficient preliminary environmental information to enable consultees to develop an informed view of the project. The information required may be different for different types and sizes of projects. It may also vary depending on the audience of a particular consultation. The preliminary environmental information is not expected to replicate or be a draft of the environmental statement. However, if the applicant considers this to be appropriate (and more cost-effective), it can be presented in this way. The key issue is that the information presented must provide clarity to all consultees. Applicants should be careful not to assume that non-specialist consultees would not be interested in any technical environmental information. It is therefore advisable to ensure access to such information is provided during all consultations. The applicant's Statement of*

Community Consultation must include a statement about how the applicant intends to consult on preliminary environmental information."

- 7.12 It is acknowledged that by its nature, a Preliminary Environmental Information Report (PEIR) should not be as detailed or as comprehensive as an Environmental Statement (ES). However, it should provide information with a reasonable level of detail to enable consultees to gain a fully informed view of the likely significant environmental effects of the proposals. Without this, it would not be possible to discern adequately whether the mitigation proposed was sufficient/appropriate and/or whether additional/alternative mitigation was required. For each round of consultation held, the Applicant produced relevant PEI, presented in a PEIR, with a reasonable level of detail. Although more of the evidence base could have been appended in each relevant PEIR, it did outline the likely significant environmental effects of the proposals at each stage. The first PEIR produced for the summer 2021 consultation provided a draft DCO and draft Outline Code of Construction Practice (OCoCP), which were welcomed.
- 7.13 Each PEIR had a Non-Technical Summary (NTS) and was presented in the proposed ES chapter format, which helped officers navigate the document. Figures and appendices were, on the whole, clear and logical to follow. The only issue raised was the PEIR, termed the PEIR Supplementary Information Report (SIR) for the targeted statutory consultation on additions/alterations to the onshore cable route in October/November 2022, which covered a significant number of additional changes/modifications to the onshore cable route. The PEIR SIR summary of proposals, particularly the presentation of this information, were not easily digestible with a significant amount of information to interpret.
- 7.14 Accordingly, WSCC considers that the Applicant **has** had regard to the guidance on this matter, although some elements of PEI were more difficult to interpret.

Draft Development Consent Order and Requirements

- 7.15 Guidance on the Pre-Application Process suggests early discussion with a range of parties on the content of the draft Development Consent Order. PINS Advice Note 13 proposes that the draft order should be made available to both themselves and other parties who may have useful comments on the operation of the order. In particular, it recommends that the developer should seek to agree wording for proposed requirements with the body to whom details are to be submitted for subsequent approval.
- 7.16 Although the relevant discharging authority has not been discussed, the Applicant provided the draft DCO and Explanatory Memorandum (EM) to WSCC in May 2023, at the same time the draft was circulated to PINS and gave WSCC a month to provide any feedback. Although welcomed, this was without the context of any associated and supporting documentation, so only high-level feedback could be provided. However, WSCC has not yet had the opportunity to discuss these comments further with the Applicant and will have to await the DCO submission to understand how/if comments made have been taken on board.

- 7.17 Accordingly, although a draft DCO and EM was shared with WSCC, it is considered that the Applicant **has not** had regard to the guidance on this matter, as no further discussions have been undertaken since the comments were sent to the Applicant.

Statements of Common Ground

- 7.18 The Guidance promotes early discussion on SoCG and suggests that these can be submitted to accompany the DCO application. PINS advice is that an early SoCG can and should be signed by both parties in the pre-application stage (albeit with the opportunity to review it before the end of the examination). This will assist in the preparation of other documents such as the Local Impact Report. Written representations can then focus on the most controversial outstanding issues.
- 7.19 Although discussions on a range of subjects have continued to take place regularly between WSCC and the Applicant, there has been no attempt by the Applicant to bring these together as a developed SoCG in advance of submission. There have also been no discussions with WSCC on SoCG structure. The Applicant has stated a commitment to commence formal discussions on this matter post relevant representations, if accepted, with those relevant representations being used to inform the SoCG.
- 7.20 Accordingly, WSCC consider that the Applicant **has not** had regard to the guidance on this matter.

Draft Environmental Statement and supporting appendices

- 7.21 Paragraph 92 of the MHCLG Guidance states "*ensuring consultation is meaningful - the pre-application consultation process for major infrastructure projects encourages applicants to give consultees as much information as possible on the characteristics of the proposed project.*"
- 7.22 Although the pre-application EPP has allowed an understanding of the baseline environment, the proposed impacts and high-level nature of the mitigation packages to address these impacts, WSCC have not had sight or had the ability to review draft ES chapters prior to submission of the DCO application.
- 7.23 Accordingly, WSCC consider that the Applicant **has not** had regard to the guidance on this matter.

Consultation with Local Communities

- 7.24 Paragraph 54 of the MHCLG Guidance states "*In consulting on project proposals, an inclusive approach is needed to ensure that different groups have the opportunity to participate and are not disadvantaged in the process. Applicants should use a range of methods and techniques to ensure that they access all sections of the community in question. Local authorities will be able to provide advice on what works best in terms of consulting their local communities given their experience of carrying out consultations in their area.*"
- 7.25 As outlined in paragraph 4.4 and Table 2, WSCC has received representations by local groups and members of the public regarding concerns around effective

consultation and engagement in the pre-application stage. Although it is the opinion of WSCC that the statutory requirements have been met, further engagement with affected local communities could have been better, which would have allowed more local people to engage with the process and respond in a meaningful way.

- 7.26 It is acknowledged that, in light of the concerns raised by local residents, the Applicant held an Information Day in Cowfold on 21 June 2023 to provide information sharing on the substation proposals. Further transparency to the affected communities and stakeholders about the decision-making process for the chosen substation site and the evidence base for this, should have been undertaken. This would have given these parties a clearer understanding of how the concerns they have raised have been taken into account from the early stages.
- 7.27 Accordingly, WSCC consider that the Applicant **has not** had regard to the guidance on this matter.

8. Conclusion

- 8.1 It is understood that it is for PINS to determine whether the Applicant has complied with the requirements of the Act in order to accept the application. It is the view of WSCC that the Applicant has complied with the statutory requirements set out in Sections 42, 47 and 48 of the Act for the reasons set out within this representation. This response has also looked at the wider issues of consultation and compliance with guidance and advice on the pre-application process to review the quality of the consultation and engagement process under Sections 49 and 50 of the Act. Although WSCC has concluded that the Applicant has met the requirements of Section 49 the Act, some elements of guidance stated under Section 50 has not been met by the Applicant.
- 8.2 In advance of the DCO submission, WSCC have not seen the ES nor draft copies of some of the key documents of relevance, including Traffic Assessment, LVIA, Landscape and Ecological Mitigation Plans. Although the Applicant has sought to engage with WSCC on principles, methods, approaches and mitigation measures for some elements through the EPP, WSCC would have preferred more pre-application review of draft documentation.
- 8.3 From the representations made to WSCC by some members of the public and local groups (see paragraph 4.4, Table 2 and Appendix 1), it is clear that third parties consider that there has not been adequate information available at the consultation stages and through detailed engagement to allow a properly informed response to be made.
- 8.4 Therefore, WSCC considers that should the DCO application be accepted, PINS should ensure that adequate time is allowed to address these matters of concern in the pre-examination period. WSCC considers that the minimum Section 56 period will impact upon its ability to respond effectively in its Relevant Representation to fully take account of the detail available in the ES. If a minimum period is adopted by the Applicant, this will also undermine progress to be made on outstanding matters that would benefit the

examination, these matters include SoCG and agreement to mitigations, revised DCO Requirements and s106 obligations.

- 8.5 WSCC requests that, in using its discretion in setting a date for the Preliminary Meeting, the Examining Authority (when appointed) maintains dialogue with the WSCC and the Applicant in order to enable progress to be made prior to formal commencement of the examination period. WSCC considers this would be beneficial to stakeholders, the Applicant and the Examining Authority.

Appendix 1: Third Party Representations

Representations from Organisations

43 emails received from the following groups/organisations:

- CowfoldvRampion (including Cowfold residents);
- Cowfold Parish Council;
- Council for the Protection of Rural England;
- Littlehampton area Community Organisations and Residents;
- Members of the East Beach Residents Association (EBRA)
<https://eastbeachresidents.org/> ;
- The Littlehampton Society (TLS) <https://thelittlehamptonociety.org.uk/> ;
- Protect Coastal Sussex (PCS), an affiliate of Protect Coastal England (PCE);
www.protectcoastalengland.org ;
- Middleton-on- Sea Coastal Alliance 'MOSCA'; and
- Middleton-on-Sea Parish Council.

Representations from Local Residents

153 emails received from 80 individuals.