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Rampion 2 Wind Farm Category 8: Examination Documents Applicant's Response to Action Points Arising from Issue Specific Hearing 1 Date: March 2024

Application Reference: 8.42
Pursuant to: The Infrastructure Planning (Examination
Procedure) Rules 2010, Rule 8(1)(c)(i)
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1. Introduction

1.1 Project Overview

1.1.1 Rampion Extension Development Limited (hereafter referred to as 'RED') (the 'Applicant') is developing the Rampion 2 Offshore Wind Farm Project ('Rampion 2') located adjacent to the existing Rampion Offshore Wind Farm Project ('Rampion 1') in the English Channel.

1.1.2 Rampion 2 will be located between 13km and 26km from the Sussex Coast in the English Channel and the offshore array area will occupy an area of approximately 160km. A detailed description of the Proposed Development is set out in **Chapter 4: The Proposed Development, Volume 2** of the Environmental Statement (ES) [APP-045], submitted with the Development Consent Order (DCO) Application.

1.2 Purpose of this document

1.2.1 This document is prepared by the Applicant to provide responses to the Examining Authority's Action Points [EV3-020] where responses were required for Deadline 2.

2. Issue Specific Hearing 1

Table 2-1: Issue Specific Hearing 1 – Onshore Effects

REF	Action Point	APPLICANT'S SUMMARY AND RESPONSES TO ACTION POINTS
Agenda Item 2 - The Proposed Development and Alternatives		
1	Applicant to make Development Consent Order (DCO) wording tighter with regards to limiting development to uniform turbine type, height and rotor diameter.	The Applicant has revised the wording in requirement 2 and condition 1 of the deemed marine licence at Schedule 11 of the draft Development Consent Order (DCO) (Document Reference 3.1) , updated at Deadline 2) to require that the authorised project will comprise turbines of a uniform height and rotor diameter
Agenda Item 3 - Traffic and Access		
8	Note to be provided on the principal differences between the 1993 and 2023 Institute of Environmental Management's Traffic Assessment Guidance documents and whether there would be difference in the outcome of the assessment if the latter was used.	Please refer to Review of IEMA Guidelines on Environmental Assessment of Traffic and Movement (Document Reference 8.41) .
13	Consideration of whether construction hours should form a requirement in the draft DCO.	<p>The Applicant considers that the construction hours are appropriately secured through the stage specific codes of construction practice (CoCP) secured through requirement 22 of the draft DCO (Document Reference 3.1), updated at Deadline 2). These must be in accordance with the outline CoCP [PEPD-033] which include standard construction hours; hence the stage specific documents must include hours of working. The stage specific CoCPs must be implemented as approved, and failure to comply with the terms will be an offence.</p> <p>This approach allows scope for a stage specific CoCP to include construction working hours to accommodate particular local circumstances within a stage if necessary, and the Applicant be held to comply with those tailored arrangements, which would not be possible if hours were specified on the fact of the DCO without an application for amendment</p>
Agenda Item 4 – Effects of the Proposed Substation at Cowfold/Oakendene		
15	Traffic Management Plan for Kent Street which considers, or signposts, an assessment of the effect of the construction egress on its rural character to be submitted.	A response to this Action Point will be submitted at Deadline 3.

Table 2-2: Issue Specific Hearing 1 – Offshore Effects

REF	AGENDA ITEM	APPLICANT'S SUMMARY AND RESPONSES TO ACTION POINTS
Agenda Item 12 – Marine Mammals		
44	Applicant to update the bottle nose dolphin assessment to take account change in management areas	Please refer to the Marine Mammals Clarification Note at Appendix 1 (Document Reference 8.42.1).
Agenda Item 16 – Development Consent Order		
52	Article 2 - Consideration as to whether the “carve out” works as set out in the definition of “commence” should not include those matters defined by Requirements 10, 12, 15, 19, 20, 21, 22 and 24.	<p>Following review of the definition of Commence in response to the request made at Issue Specific Hearing 1 (ISH1), the Applicant has revised this definition in the draft DCO and it no longer carves out onshore site preparation works for the onshore works.</p> <p>To allow for onshore site preparations to be undertaken, and for them to be undertaken in accordance with the embedded measures identified in the Environmental Statement, the requirement for submission of a programme identifying stages of works provides for a programme of stages for onshore site preparation works to be submitted and approved. The submission of documents, plans and schemes pertaining to stages of the authorised project which are required to be submitted and approved prior to the commencement of a stage must then be submitted prior to the commencement of any identified stage of onshore site preparation works. Consequential amendments have therefore been made to requirement 10 to allow for the submission of the programme of stages for approval and various of the requirements to give effect to this change.</p>
53	Article 2 - Consideration as to whether the Outline Offshore Operations and Maintenance Plan ought to be defined in Article 2 or listed as a certified document in Schedule 16.	The Applicant has included the Outline Operations and Maintenance Plan for offshore works is included as a definition in article 2 and certified pursuant to article 50 and Schedule 16.
54	Article 2 – Consider the definition of “statutory undertaker” should align with that defined by the Planning Act and include s138(4A).	<p>The need to define ‘statutory undertaker’ in the DCO derives from the use of that term in the provisions relating to the compulsory acquisition and use of land.</p> <p>The Acquisition of land Act 1981 (within which s.127(8) of the 2008 Act states that the definition of the statutory undertaker is to be found), is the primary piece of legislation relating to procedure for compulsory purchase orders by bodies on whom the power to make such an order is conferred under relevant enactments. Further, it is believed that all of those relevant enactments provide for the deeming of such bodies to be statutory undertakers but certainly those enactments relating to gas, water and electricity undertakers do. In this context, it is therefore correct that the definition of statutory undertaker provided by s.127(8) should be relied upon in the draft DCO (with the addition of public communications providers). This approach is, so far as we are aware, consistent with every other relevant DCO which has been made.</p> <p>Section 138(4A) of the 2008 Act (which provides a further definition of statutory undertaker for the purposes of section 138 only) was inserted by s.23(4) of the Growth and infrastructure Act 2013. Section 23 of the 2013 Act was concerned with the removal of certain certification and consent procedures which applied under the 2008 Act in relation to statutory undertakers’ land and apparatus so that they could be dealt with as part of the DCO examination process. In particular, section 23 removed the previous requirement in section 138 of the 2008 Act for the Secretary of State to provide his consent where a DCO authorises the acquisition of land either on which a statutory undertaker has erected apparatus (or where electronic communications apparatus is installed) or in respect of which a statutory undertaker (or electronic communications code network operator) has a right of way or a right or right in respect of apparatus. This amendment now enables a DCO to remove such apparatus or extinguish such rights only where the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development.</p>

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In this context, s.23(4) of the 2013 Act introduced a definition of statutory undertaker specifically for the purposes of section 138 of the 2008 Act by reference to persons who are deemed to be statutory undertakers *for the purpose of any provision of Part 11 of the TCPA 1990*. The meaning of statutory undertaker (for the purposes of the whole of the TCPA 1990) is given in s.262 of Part 11 of the Act (statutory undertakers) but the operative provisions of Part 11 are confined to –

- the application of Part 3 of the Act (control of development) to statutory undertakers,
- the extinguishment of rights of statutory undertakers, etc. in land acquired by a Minister under Part 9 of the Act (acquisition and appropriation of land for planning purposes),
- the extension or modification of statutory undertakers' functions in certain circumstances (in consequence of the powers under Part 9 of the Act),
- the right to compensation by statutory undertakers in respect of certain decisions, and
- the display of advertisements on operational land.

The definition of statutory undertaker provided under s.138(4A) of the 2008 Act obviously duplicates to a great extent the definition provided by s.127(8) of the Act but to the extent that it does not, the definition under s.138(4A) is more confined and limited. The Applicant is of the view that the definition under s.127(8) is cast wider than under s.138(4A) and certainly captures any body defined as a statutory undertaker for specific purposes under s.138(4A). To conflate the definition is therefore unnecessary but could actually lead to the definition becoming imprecise and more open to interpretation and this is why it is not, as far as the Applicant is aware, precedented.

55 Article 32 – The ExA is concerned that the power contained within Article 32(10), which authorises the Undertaker to acquire new rights or impose restrictive covenants over land identified as Temporary Possession, is too broad and imprecise, and has been struck down by the Secretary of State on a number of Orders. The Applicant indicated that the power would only apply to specific plots, but the power is not restricted as such. Review and amend.

Article 32(10) (which has now been renumbered as Article 32(11)) does not authorise the Undertaker to acquire new rights or impose restrictive covenants over land, rather, it restricts the Undertaker's power in Article 22 of the DCO (Compulsory acquisition of land) to exercise compulsory acquisition powers in relation to the land specified in columns (1) and (2) of Schedule 9 to the DCO (land of which temporary possession may be taken) and has the effect that none of the land shown shaded green on the [Land Plans Onshore \[PEPD-003\]](#) may be compulsorily acquired.

Article 32(10) (now Article 32(11)) expressly prohibits the exercise of compulsory acquisition powers over the Schedule 9 temporary possession land except in circumstances where the same land is also listed in column (1) of Schedule 7 to the DCO (acquisition of new rights and imposition of restrictive covenants), thus it is only plots which are listed in column (1) of Schedule 7 over which the power in Article 24 to compulsorily acquire rights and restrictive covenants may be exercised.

Whilst Schedule 7 includes all of the land shaded blue on the [Land Plans Onshore \[PEPD-003\]](#) (being land over which new rights may be acquired and restrictive covenants imposed), there are only three parcels of land which are listed in both Schedule 7 and Schedule 9, being plots 2/28, 33/14 and 33/16. These parcels are shown coloured blue on the [Land Plans Onshore \[PEPD-003\]](#) because the power to compulsorily acquire new rights and impose restrictive covenants applies. Paragraphs 6.10.10-6.10.11 of the [Statement of Reasons \[APP-021\]](#) explains why these parcels have been listed in both schedules 7 and 9 to the DCO which, in summary, is because the proposed purpose of the temporary possession of the parcel in schedule 9 to the DCO is different to the proposed purpose for which new rights or restrictive covenants may be acquired over that parcel pursuant to Article 24 and Schedule 7.

By way of example, in relation to Plots 33/14 and 33/16, Article 32 and Schedule 9 permits the temporary use of those parcels as a construction compound and for access to facilitate construction of the authorised development, including any onshore Further Works, as defined in Schedule 1 to the Order, that may be required, and those parcels are also listed in Schedule 7 to the DCO which, as can be seen from the extracts below, permits the acquisition of Landscape and Environmental Mitigation Rights and the imposition of an Environmental Mitigation Restrictive Covenant in respect of those plots.

REF AGENDA ITEM APPLICANT'S SUMMARY AND RESPONSES TO ACTION POINTS

<p>33/10, 33/11, 33/14, 33/15, 33/16, 33/17, 33/30, 34/26, 34/27</p>	<p>Landscape and Environmental Mitigation Rights</p> <p>All rights necessary for the purposes of the construction, installation, retention, operation, maintenance and decommissioning of the authorised development comprising Work No. 17, including to—</p> <p>(a) enter and be on the land and remain with or without vehicles, material, apparatus, equipment and personnel, to plant, install, execute, implement, retain, repair, improve, renew, relocate, replant, inspect, prune and remove</p>	<p>33/10, 33/11, 33/14, 33/15, 33/16, 33/17, 33/30, 34/26, 34/27</p>	<p>Landscaping and Environmental Mitigation Restrictive Covenant</p> <p>A restrictive covenant over the land for the benefit of the remainder of the Order land to prevent any activity which would in the reasonable opinion of the undertaker result in the disturbance of landscaping, environmental or ecological mitigation or enhancement areas or areas of habitat creation including any ploughing or grazing, during the period within which the undertaker is bound by any consent to maintain that landscaping, environmental or ecological mitigation or enhancement area or area of habitat creation, without the prior written consent of the undertaker.</p>
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The Undertaker will not be able to acquire new rights or impose restrictive covenants over any land which is listed in Schedule 9 as temporary possession land unless the same land is also listed in Schedule 7 as land over which the Undertaker may acquire new rights or impose restrictive covenants over land. None of the land shaded green on the [Land Plans Onshore \[PEPD-003\]](#) appears in both Schedules 7 and 9 to the DCO, therefore this land is subject to powers of temporary possession only.

For the three parcels to which Article 32(10) (now Article 32(11)) applies, Articles 24(1) and 24(2) operate so that the purposes for which rights may be acquired and restrictive covenants may be imposed are expressly defined and limited to such purposes as are set out in Column 2 of Schedule 7. The purpose is therefore clearly set out within Schedule 7 in respect of each plot of land and the Undertaker may only acquire new rights or impose restrictive covenants over land in accordance with those purposes as they expressly relate to each identified plot. In the case of Plot 33/14 for example, that purpose is the acquisition of Landscape and Environmental Mitigation Rights and the imposition of an Environmental Mitigation Restrictive Covenant.

Article 32(10) (now Article 32(11)) therefore only permits a very limited ability to compulsorily acquire new rights or impose restrictive covenants over Schedule 9, the purposes of which are tightly defined and controlled by the DCO.

The Applicant is aware the Secretary of State has struck out this power in other orders, such as the A585 Windy Harbour to Skippool Highway Development Consent Order 2020, however, the relevant applicant in that case was seeking a general power to acquire existing rights, create new rights and impose restrictive covenants over any of the order land thereby including any of the land which was only referred to in the temporary possession schedule, despite such land not otherwise being specified as land over which the applicant would have the power to acquire existing rights, create new rights and impose restrictive covenants. The power which was being sought in that instance was general and not expressly tied to land parcels listed in the relevant rights schedule, and was such that the Secretary of State noted that it *“was not clear as to whether the [affected] persons... would have been aware that the Applicant was seeking to compulsorily acquire new rights in that land”* (paragraph 52 of the decision letter). That does not apply here as the plots over which the Applicant will have the power to acquire new rights and impose restrictive covenants are expressly listed in Schedule 7.

<p>56</p>	<p>Part 5 (and elsewhere) The ExA is concerned that the terms “covenant” “restrictive covenant” and “restrictive and other covenants” is too broad and imprecise, and it should be simplified and defined. Consider and respond.</p>	<p>The Applicant has reviewed and amended the DCO drafting so that it is consistent and refers throughout to “restrictive covenants”.</p> <p>The power to impose restrictive covenants in relation to the land shown shaded on the blue on the Lands Plans is limited by Article 24(2) of the DCO to the imposition of restrictive covenants for the express purposes specified in Column 2 of the table in Schedule 7. Those purposes are clearly restricted and defined and the Applicant does not therefore consider that any further amendments are required in this respect.</p>
<p>57</p>	<p>Article 57 - Check the terminology “Inconsistent Planning Permissions”.</p>	<p>The Applicant confirms that this is the terminology used in the Supreme Court decision which has given rise to the inclusion this wording in article 57.</p>

REF	AGENDA ITEM	APPLICANT'S SUMMARY AND RESPONSES TO ACTION POINTS
58	Review whether the list set out in Requirement 22(5) should also include details of the compounds and soil areas.	The Applicant confirms that it is not considered appropriate for requirement 22 to include details of the compounds and soil areas. Requirement 22 secures the submission of stage-specific codes of construction practice (CoCP) which must accord with the outline CoCP [PEPD-033] certified pursuant to article 50. The CoCP for the stage within which the construction compounds and soil storage area will need to satisfy all components set out in the outline CoCP [PEPD-033] in respect of those particular areas.
59	Consider changes to Requirement 8 to reflect the measures set out in the Design and Access Statement as raised by Horsham DC.	Consideration is being given to the design principles in the Design and Access Statement [AS-003] for the onshore substation and the extension to the National Grid Substation at Bolney which will be updated at Deadline 3. The Draft DCO [PEPD-009] will then be updated to reflect the updated Design and Access Statement in its next iteration.
60	Review whether a separate Requirement is needed for Protected Species, which the Applicant initially proposes to control via the Code of Construction Practice but which is not supported by Natural England.	The Applicant considers that it is not appropriate to require an application for protected species licences specified through a requirement. It is not certain at present that any such licences will be required, but the terms of the stage specific CoCP secure additional surveys to be carried out prior to commencement to check whether any protected species are present in a particular stage and a licence would be required. In addition, inclusion of a requirement for a protected species licence would duplicate an existing statutory regime which the draft DCO does not seek to disapply.
61	Review draft DCO to ensure the South Downs National Park are appropriately referred to.	The Applicant has reviewed the draft DCO [PEPD-009] updated at Deadline 2 and updated the document to reflect the role of the South Downs National Park Authority in relation to the National Trail, and to identify where streets, accesses, public rights of way and hedgerows are located within the area for which it is local planning authority
62	Respond to National Highways oral representations which were (amongst other things): - National Highways should be similarly defined in the draft DCO as other statutory bodies; - amend highway authority to include National Highways in Article 2; - A27 to be explicitly referred to in draft DCO; and - Schedule 1 lacks a governance of works.	<p>The Applicant does not consider that National Highways is required to be defined in the draft DCO [PEPD-009] updated at Deadline 2; the definition of highway authority in the draft DCO is confirmed by reference to the definition in the Highways Act 1980 which differentiates between the local highway authority and the highway authority responsible for the strategic road network. The role of National Highways in discharging requirements is in its role as highway authority as so defined. This is consistent with a change that has already been made in the draft DCO [PEPD-009] to include a definition of statutory nature conservation body in place of specifying Natural England in case of a future change to the name of constitution of this body.</p> <p>It is not clear how National Highways require the A27 to be referred to in the draft DCO [PEPD-009]; reference is already included to trunk roads. Neither is it clear what National Highways wish to see in terms of a governance of works in Schedule 1 of the draft DCO [PEPD-009]. The Applicant will consider the requirement for further changes on receipt of additional detail from National Highways.</p>

