

Comment on the Issue specific Hearing ISH2 Session 5 on Seascape / Landscape visual effects held Thursday morning, 16 May 2024.

On matters concerning the SDNP response to the hypothetical ExA question on whether the Levelling up and Regeneration Act means Rampion 2 should not be consented; and the community organisation question on how the ExA will account for the European Convention on Landscapes and Offshore Energy SEA strategic environmental advice for visual buffers in this Examination, applicable to the very large Rampion 2 turbines.

## Examination Deadline 4

For EN010117 – Rampion 2 Offshore Wind Farm

**Comment on the Issue specific Hearing ISH2 Session 5 on Seascape / Landscape visual effects held Thursday morning, 16 May 2024.**

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Interested Party Registration Numbers:  
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In association with Protect Coastal Sussex **20044835**

### **Comment:**

We seen this as important and relevant follow-up to the Issue Specific Hearing 2 (ISH2) on the seascape / landscape visual impacts of the proposed Rampion 2 offshore elements with up to 90 with turbine generators (WTGs) up to 325m tall highly visible from the shore and the South Down National Park (SDNP) thereby impacting sensitive visual receptors (residents and visitor) and the Special Qualities of the SDNP.

Our comment focuses on a verbal exchange between the ExA member, the SDNP Spokesperson and the Rampion 2 representatives.

### **Recording of Issue Specific Hearing 2 (ISH2) – Session 5**

#### **Seascape / Landscape Visual Effects**

<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010117/EN010117-001405-ISH2%20Sesh%205%20Code.html>

Specifically when asked (at 1;01:40 into the Session 5 recording) whether the Levelling up and Regeneration Act (LURA) precluded decisions on Rampion 2 that were harmful to the special qualities of the SDNP, the SDNP representative responded in essence and here we paraphrase that:

- a.) the new legal provisions and duties in the LURA have not yet been tested in court, so there is no definitive view as yet, and

b.) “seek to further” as in the LURA that stipulates the Applicant and All Parties must seek to further the special qualities of a NSIP that impacts a National Park has in other contexts been perceived by courts as an active duty to do something.

In other words, it is a duty of all Parties to seek to further the special qualities of a National Park not to simply try and fail. This duty also applies in the Examination to the ExA as well as Interested Parties, the Secretary of State, and not only the Applicant and SDNPA itself.

“Seeking to further” is in essence necessary but not sufficient as the LURA is concerned with outcomes. This opinion is reflected in Natural England’s interpretation of the LURA duty in its opinion on another NSIP issued in Dec 2023 just after the LURA came into effect as an amendment to the Planning Act (2008).<sup>1</sup>

Our comment is that we agree fully with this observation of the SDNP and await a response by Natural England on the ExA questions to NE which interested and affected community organisations as IPs address in separate Deadline 4 Representations.

As regards to the Applicant’s comment on the remoteness issues and the LURA itself and the ExA needing to consider all factors in the round, citing the national climate change mitigation need, we are in full agreement that it is multi-faceted and there needs to be balance with national objectives.

As comment on the Applicants point, we offer this relevant NPS statement as informing our view as to span of national needs and what the ExA can take into account:

EN-1 policy:

- Para 2.2.4, “It is important that .... the planning system ensures that development consent decisions take account of the views of affected communities and respect the principles of sustainable development.” and
- Para 2.2.7, “***The Government’s wider objectives for energy infrastructure include contributing to sustainable development and ensuring that our energy infrastructure is safe ... sustainable development is relevant not just in terms of addressing climate change, but because the way energy infrastructure is deployed and affects the well-being of society and the economy.***” Our underlining for emphasis.

**We add further:**

An interested Party speaking on behalf of Local Community organisations at 1.38:20 into Session 5 (the SH2 session recording for the morning of 16 May 2024 on the PINS website) raised the highly important and relevant question as to how will the ExA address and take into account the European Landscape Convention (ELC) and the Offshore Energy SEA

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<sup>1</sup> Natural England provided a response 15 Dec 2023 to the Lower Thames Crossing Letter title, “Application by National Highways for an Order Granting Development Consent for the Lower Thames Crossing, Natural England’s response to Deadline 9a”.

(OESEA) advice on visual buffers distances for wind turbines the scale of Rampion 2.<sup>2</sup> These considerations pertain to the Rampion 2 design and are material in this Examination.

The ExA response at 1:40:20 into the recording was simply words to the effect, *“thank you for the submission. Reference to that has been dealt with in written submissions”*.

To be frank we were disappointed by that comment:

- What is deeply concerning to many Interested Parties in community organisations who would be forced to “host” the Rampion infrastructure if consented, is that no mention at all is made of the ECL relevance or OESEA advice in any of the Examination materials issued by the ExA.
- Nothing is present either in the form of Questions for clarification or Hearing topics for discussion (our apologies if we missed the ExA referencing the ECL and OESEA).

We do not agree it is reasonable to simply state that is a matter already dealt with whatever that actually means with no dialogue opportunity or conversation as is reasonable and warranted. We witnessed the Applicant shut down that conversation during the pre-application period.

The PINs Rampion Examination Library shows that Interested Parties as well as Statutory Consultees have submitted multiple inputs and evidence to the EXA on the body of legislation and safeguards that we believe are central to this case-Specific Examination, including specifically the ELC and the OESEA that interprets its application in UK territory as stated in the objective of OESEA-4 (2022).

- OESEA-4 (2022) explicitly states the UK objectives and indicators for seascape / landscape protection include the, **“Objective: To accord with, and contribute to the delivery of the aims and articles of the European Landscape Convention and minimise significant adverse impact on seascape/landscape including designated and non-designated areas.”** Our bold text and underlining for emphasis.

This far into the Examination it is simply not clear to IPs whether or how any of this highly relevant evidence will be taken into account in this Examination and in framing recommendations as to the legality of the Rampion 2 Design and whether it breaches International commitments for seascape/landscape protection as interrupted so clearly by the Government’s own Offshore Energy SEA

That apart from the fact Rampion challenges the interpretation and fair application of the Marine Policy Statement (MPS, 2021) on the indivisibility of seascape /landscape protection and the LURA case on the unwarranted adverse impacts on the Special Qualities of the SDNP, as argued by SDNP.

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<sup>2</sup> That after explaining its critical importance and relevance in the Rampion 2 case where Rampion 2 due to its scale and proximity clearly challenges any notion of legal protection and safeguarding. It is clearly “off the scale” by any reasonable consideration of the aims and specifics of the legal safeguarding protections

Together with the LURA the ECL / OESEA / MPS form a body of law that argues strongly against consent of the Rampion 2 Application. As the opportunity for IP input to the Examination is coming to a close we take the liberty to state what we have said in a separate representation for Deadline 4 on Questions to Natural England.

If the ExA is minded to recommend consent for this Application to the Secretary of State which will be in the public domain, then:

- Firstly, we believe that recommendation should contain explicit caution and statements that consenting Rampion 2 means setting aside international commitments under the ECL which have been clearly interpreted by the Government's own comprehensive OESEA process and strategic environmental advice on visual buffers that apply to Rampion 2, and
- Secondly, we believe the Rampion 2 as a case-specific situation warrants testing the legality of design in the courts, this given the scale and significance of the impact on both current and future generations, the cost £3-4 billion and how it challenges all important and relevant applicable law and policy.

We agree with the inference of the SDNPA Representation in regard to the need to test these now policy considerations in court to better inform the Secretary of State, however that is best done.