

Rampion 2 Wind Farm

Explanatory Memorandum Category 3 – Development Consent Order

Date: ~~April~~ June 2024

Revision €D

Document Reference: 3.2

Pursuant to: APFP Regulation 5 (2) (c)

Ecodoc number: 004866006-01



Document revisions

Revision	Date	Status/reason for issue	Author	Checked by	Approved by
A	08/08/2023	Final for DCO Submission	Eversheds Sutherland	RED	RED
B	20/03/2024	Deadline 2	Eversheds Sutherland	RED	RED
C	25/04/2024	Deadline 3	Eversheds Sutherland	RED	RED
D	03/06/2024	Deadline 4	Eversheds Sutherland	RED	RED

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared on behalf of Rampion Extension Development Limited (the **Applicant**) as part of its application for a Development Consent Order (**DCO**), that has been submitted to the Secretary of State (the **SoS**) for Energy Security and Net Zero under section 37 of the Planning Act 2008 (the **2008 Act**) as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- 1.2 The Applicant is seeking development consent for an offshore generating station adjacent to and forming an extension to the existing Rampion Offshore Wind Farm, and all infrastructure required to transmit the power generated, to the Bolney National Grid substation, which will require to be extended (the **Proposed Development**). A description of the Proposed Development is given below, with more detail set out in the Environmental Statement submitted with the Application (Application document reference 6).
- 1.3 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (an **NSIP**) under sections 14 and 15(3) of the 2008 Act. The DCO, if made by the SoS, would be known as the Rampion 2 Offshore Wind Farm Order (the **Order**).
- 1.4 This Explanatory Memorandum explains the purpose and effect of each article of and Schedule to the draft Order.
- 1.5 Notwithstanding its repeal, the wording used in the draft Order has been derived from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the Model Provisions). In some cases, the draft Order draws from the drafting used in DCOs for similar developments made under the Planning Act 2008 (the **2008 Act**), and from orders made pursuant to the Transport and Works Act 1992 and other legislation authorising development. As the Order seeks to apply and modify statutory provisions, including concerning the compulsory acquisition of land and the treatment of certain requirements as planning conditions, in accordance with sections 117(4) and 120(5) of the 2008 Act, it has been drafted as a statutory instrument.

2. The Applicant

- 2.1 The Applicant, incorporated under company number 12091939, and whose registered office is at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, England, SN5 6PB, is a joint venture between RWE Renewables UK Ltd ("RWE"), and a consortium consisting of Macquarie and Enbridge. RWE is an international

company with power generation, trading, and supply. Key markets include the UK, Europe, North America, Asia, and Oceania. In 2019, RWE acquired the original development company and major shareholder in the wind farm to which the Authorised Project would form an extension, being Rampion Offshore Wind Farm (referred to hereinafter as Rampion 1). RWE currently owns interests in nine operational offshore wind farms in the UK in English, Welsh, and Scottish Waters and is currently constructing a further two offshore wind farms in the North Sea.

- 2.2 The company specialises in onshore and offshore wind, utility-scale photovoltaic (PV) solar power and energy storage projects. RWE ranks among the largest global players in renewable power generation with a total installed generation capacity of nine gigawatts and an additional 2.6 gigawatts under construction. As such RWE can demonstrate a strong track record in delivery of projects such as the Proposed Development.
- 2.3 RWE employs approximately 3,600 renewables professionals who develop, build, and operate large renewable energy assets in 15 countries across Europe, the Americas and Asia-Pacific. Further details on the corporate structure between RWE and the Applicant is included in the funding statement which is submitted in support of the Application.
- 2.4 The Macquarie consortium, an investor in many other UK renewable energy assets, includes Macquarie European Infrastructure Fund 5, the Green Investment Group and USS pension fund.
- 2.5 Enbridge, which is also a shareholder in Rampion 1, is a Canadian energy infrastructure company with core businesses including oil and gas transmission distribution and storage in North America, as well as investments in the renewable energy sector in North America and Europe.
- 2.6 The Order defines the Applicant as the person authorised to exercise the powers in the Order, as 'the undertaker'. This is subject to the operation of article 5 of the draft Order which allows the benefit of the Order to be transferred to, or powers to be exercised by, another party in specific circumstances.

3. **The Purpose of the Order**

- 3.1 The purpose of the Order will be to grant the Applicant development consent for a Nationally Significant Infrastructure Project ("NSIP").
- 3.2 In summary the Proposed Development includes

- 3.2.1 an offshore generating station with an electrical export capacity of in excess of 100MW comprising up to 90 wind turbines and array cables, in an area approximately 196km², located approximately 13km south of the Sussex coast located to the west of the existing Rampion Offshore Windfarm
 - 3.2.2 up to three offshore substations
 - 3.2.3 cables between the wind turbine generators ("WTG"), between the WTGs and the offshore substations, and between the offshore substations themselves and the landfall location at Climping, West Sussex
 - 3.2.4 an underground cable connection between the landfall, and a satellite substation known as Oakendene, and then onwards to connect into the existing National Grid substation at Bolney, together with an extension to that existing substation
- 3.3 The Proposed Development comprises an NSIP pursuant to sections 14(1)(a) and 15(3) of the 2008 Act as an offshore generating station having a capacity of more than 100MW. Pursuant to section 31 of the 2008 Act a DCO is required to authorise an NSIP.
- 3.4 The Proposed Development also includes associated development linked to the NSIP which can be authorised by a DCO pursuant to section 115 of the 2008 Act.
- 3.5 Section 115(1) of the 2008 Act provides that development consent may be granted for "*(a) development for which development consent is required, or (b) associated development*". The SoS must therefore be satisfied that all the elements included within the 'Authorised Development' are either part of the NSIP or are associated development, to include them in the Order pursuant to section 115 of the 2008 Act.
- 3.6 Guidance on associated development has been issued by the SoS¹. In this guidance associated development is described as being "typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project" (paragraph 6) and requiring "a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts. Associated development

¹ 'Guidance on associated development applications for major infrastructure projects' (Department for Communities and Local Government) (April 2013)

should not be an aim in itself but should be subordinate to the principal development" (paragraph 5).

- 3.7 In some cases there may be some overlap between associated development and works which form part of the NSIP.
- 3.8 The generating station and related development within Work Nos. 1 and 2 as described in Part 1 of Schedule 1 of the Order (the Authorised Development) constitute "*development for which development consent is required*" and thus comprises an NSIP, as set out above.
- 3.9 The Order also includes other development which is associated development comprising Work No. 3 to Work No 20, and further works as described in Part 1 of Schedule 1.
- 3.10 The works specified in Work Nos. 3 to 20 are not an aim in themselves but are required to facilitate the delivery of the energy generated by the generating station to the national grid. The Order requires that this associated development must be carried out within the Order limits, but the detailed design will be finalised post consent either through conditions of the deemed marine licence for offshore works, or pursuant to the discharge of requirements in relation to onshore works.
- 3.11 It should be noted that the laying of cables for the Proposed Development (comprising Work Nos. 9 and 16) is aimed to cause as little disruption as possible and includes the ability to install cables by horizontal directional drilling or other trenchless technologies to avoid major crossings, protected or other ecologically sensitive sites.
- 3.12 Areas of land required permanently comprise the locations for the onshore substation at Oakendene, near Cowfold (Work No. 16), and the extension to the existing National Grid substation at Bolney (Work No. 20). Land to be used temporarily and requiring restoration comprise, broadly, the land required for the installation of the transmission cable circuits underground, haul road, soil storage areas, cable stringing out areas along the onshore cable corridor, the five construction compounds and temporary vehicular access tracks.
- 3.13 Landscaping is also required specifically in and around the Oakendene substation location and may be required at the extension to the existing Bolney substation. This is secured through the design and access statement submitted with the application (Application document reference 5.8) and with which the detailed design for each substation must accord (requirements 8 and 9), and the landscape and ecological management plan (requirement 12) imposed through the Order. An outline landscape and ecological management plan,

with which the stage specific landscape and management plans must accord, is also provided with the application (Application document reference 7.10).

- 3.14 The Applicant has considered these works against the statutory definition of associated development and the criteria in DCLG *'Planning Act 2008: Guidance on associated development applications for major infrastructure projects'* (April 2013) and is satisfied that all these works are capable of being granted development consent by the SoS pursuant to section 115.
- 3.15 The approach taken by the Applicant between those parts of the Authorised Project which form the NSIP and those parts that form Associated Development follows the approach taken by all DCO applications for offshore windfarms to date.
- 3.16 Pursuant to section 120(3) of the 2008 Act, the Order also includes the deemed grant of marine licences pursuant to section 66 of the Marine and Coastal Access Act 2009. Two deemed marine licences are included in the draft Order, one in relation to the generation assets and the second in relation to the transmission assets. The Order also disapplies statutory provisions as described further below.

4. **The Order limits**

- 4.1 The Proposed Development will be constructed, operated and maintained within the Order limits, which comprises the following areas:
 - 4.1.1 Array area: in which the wind turbine generators, the offshore substations, array cables, interconnector cables and some export cables will be located. This area is approximately 160km² and will be located between approximately 13 kilometres and 26 kilometres from the Sussex Coast.
 - 4.1.2 An additional area offshore of approximately 36km² where no wind turbine generators or offshore substations will be located but where subsea cables can be located comprising two wind farm separation areas and a marine aggregates buffer area.
 - 4.1.3 Export cable corridor comprising approximately 59km² between the edge of the array area and the landfall location, where up to 4 transmission cables will be installed to bring electricity from the generating station onshore.
 - 4.1.4 An intertidal area and onshore Order limits, in which the export cable circuits will be linked to the onshore cable

circuits and the latter carry power to a new onshore substation, and a connection onward to where the extended National Grid substation will be located. The onshore Order limits also include for construction compounds, soil storage and cable stringing out areas, and both construction and operational accesses.

5. The Proposed Development

If the Order is granted the Proposed Development will comprise the **Authorised Project**. The main components of the Proposed Development are summarised below.

The Generating Station: the NSIP

- 5.1 **Work No.1** consists of up to 90 wind turbine generators (**WTGs**). **Work No.2** comprises the network of cables connecting the WTGs to each other and into the offshore substations to transmit the generated power, and communications, between WTGs and between the WTGs and the offshore substations. **Work No.3** comprises up to 3 offshore substations which will collect power from the WTGs, may be connected to each other via interconnector cables and connect into the export cables within the Export Cable Corridor
- 5.2 The WTGs comprising Work No. 1 have a generating capacity of in excess of 100 megawatts and therefore satisfy the criteria for the Proposed Development to comprise an NSIP.

The 'Associated Development'

- 5.3 The Associated Development for the purposes of section 115 of the 2008 Act comprises Work Nos. 3 to 20 of the Proposed Development. They are summarised below.
- 5.3.1 **Work No. 4** consists of up to four export cable circuits to be laid on or beneath the seabed, from the offshore substations to a location proximate to the termination of the cable ducts bringing the export cables from the landfall location;
- 5.3.2 **Work No. 5** consists of the transition from the export cables circuits comprising Work No. 4 to the intertidal works comprising Work No. 6. It comprises up to four export cable circuits to be laid on or beneath the seabed as a continuation of the cables comprising Work No. 4 which will then be pulled through ducts which extend from the four temporary horizontal directional drilling exit pits;

- 5.3.3 **Work No. 6** consists of the installation of up to four cable circuits and associated ducts underground by means of horizontal directional drilling through the intertidal area between mean low water springs and mean high water springs;
- 5.3.4 **Work No. 7** consists of the installation of up to four cable circuits and associated ducts underground and below the beach at Climping laid by horizontal directional drilling. The exact location of the works comprising Work No. 7 will be confirmed through the Code of Construction Practice to be submitted and approved pursuant to requirement 22 of the draft Order;
- 5.3.5 **Work No. 8** consists of works to connect the export cables to the onshore cable circuits at landfall. This will include the construction of launch pits for the horizontal directional drills going under the Climping beach and the intertidal area (Work Nos. 6 and 7), transition joint bays and the installation of cable ducts and pulling through the cables themselves;
- 5.3.6 **Work No. 9** comprises the installation of the onshore cable underground from the landfall location to the onshore substation at Oakendene comprising Work No. 16. It is anticipated that most of the installation works will be undertaken by way of open cut trenching, but that trenchless technologies will be used to respond to major crossings and areas of environmental or engineering sensitivities. This will predominantly be by way of horizontal directional drilling, and it is this technology that has been assessed and reported in the Environmental Statement (**Application Document 6**), but other trenchless technologies may be used where the environmental impacts of doing so will result in no new or materially worse effects than those identified and reported in the Environmental Statement;
- 5.3.7 **Work No. 16** comprises the construction and operation of the onshore substation referred to as Oakendene. Work No. 16 includes civil works to allow the installation of electrical equipment, the installation and commissioning of high voltage electrical equipment, the construction of associated control buildings for the operation of the substation, works to mitigate the impact of the substation through surface water and drainage management measures, boundary treatment and landscaping within the substation compound

area. Detailed design will be secured through a requirement imposed by the Order (requirement 8).

- 5.3.8 The Oakendene substation will be connected to the existing National Grid substation at Bolney: **Work No. 19** comprises the cable connection works between the Oakendene substation and the National Grid substation.
- 5.3.9 **Work No. 20** comprises the works to extend the existing Bolney substation to accommodate the required connection and includes mitigation measures to address surface water management, boundary treatment and landscaping. Detailed design will be secured through discharge of a requirement (requirement 9);
- 5.3.10 **Work Nos. 6, 7, 8, 9, 16, 19 and 20** comprise the connection works for the Proposed Development. These connection works will consist of cable circuits and associated cable ducts, open cut trenching and use of trenchless crossing technologies including horizontal directional drilling launch and exit pits and associated temporary compounds, transition joint bays, and the permanent above ground infrastructure at the substations;
- 5.3.11 **Work No. 10** comprises temporary construction compounds required to support the construction of the connection works comprising Work Nos. 6, 7, 8, 9, 16 and 19;
- 5.3.12 **Work No. 11** comprises temporarily soil storage areas required during the construction of the connection works comprising Work No. 7, 8 and 9;
- 5.3.13 **Work No. 12** comprises areas required temporarily for the stringing out of cables to be laid underground as part of Work No. 9. This comprises areas where no intrusive works will be carried out;
- 5.3.14 A number of temporary accesses will be required to facilitate the Proposed Development. Those required for construction of the connection works only are included as **Work No.13**.
- 5.3.15 A number of accesses will be required during the construction phase and retained during the operational phase for maintenance of the Proposed Development. These are included as **Work No. 14**. A further set of accesses will be required during the operational phase only for maintenance and are included as **Work No. 15**.

- 5.3.16 **Work No. 18** comprises a construction and permanent access to the onshore substation comprising Work No. 16. This will need to be wide enough to accommodate abnormal indivisible loads both during the construction and operational life of the Proposed Development;
- 5.3.17 **Work No. 17** comprises areas where environmental mitigation works will be undertaken to mitigate impacts of the construction of the onshore substation comprising Work No. 16, and the extension to the extension to the existing National Grid substation at Bolney comprising Work No. 20. The works to be undertaken as part of Work No. 17 adjacent to the existing Bolney substation will need to be agreed with National Grid in connection with their continuing operation of, and any future proposals at, that substation.
- 5.4 The Associated Development described in Part 1 of Schedule 1 to the draft Order includes, in connection with such Work Nos. 1 to 6 in the offshore Order limits, such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement. These are stated to include—
- 5.4.1 scour protection around the foundations of the offshore structures;
 - 5.4.2 cable protection measures such as the placement of concrete mattresses, rock placement, and/or bagged solutions;
 - 5.4.3 vessels carrying out intrusive activities;
 - 5.4.4 the removal of material from the seabed required for the construction of Work Nos. 1 to 5 and the disposal of inert material of natural origin within the Order limits produced during construction drilling, seabed preparation for foundation works, cable installation preparation such as sandwave clearance, boulder clearance, pre-trenching, horizontal directional drill arisings and excavation of exit pits;
 - 5.4.5 removal of static fishing equipment; and
 - 5.4.6 disposal of drill arisings in connection with foundation drilling within the offshore Order limits.

- 5.5 Further associated development is also included in Schedule 1 for the onshore works comprising Work Nos. 7 to 20, and Work No. 6 in the intertidal area. These works are expressed to include:
- 5.5.1 works to secure vehicular and/or pedestrian means of access including the creation of new tracks, footpaths, and/or widening, creation of passing places, upgrades, creation of bellmouths, creation of temporary slip roads and improvements of existing tracks, footpaths and roads, including provision of visibility splays;
 - 5.5.2 temporary construction access tracks or haul road;
 - 5.5.3 bunds, embankments, swales, landscaping, fencing and boundary treatments and other means of enclosure;
 - 5.5.4 vegetation clearance;
 - 5.5.5 habitat creation and restoration;
 - 5.5.6 joint bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable marker, tiles and tape and other works associated with cable laying;
 - 5.5.7 works for the provision of apparatus including cabling, water and electricity supply works, foul drainage provision, surface water management systems and culverting including drainage mitigation works;
 - 5.5.8 works to alter the position of apparatus, including mains, sewers, drains and cables;
 - 5.5.9 works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
 - 5.5.10 landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised project;
 - 5.5.11 works for the benefit or protection of land affected by the authorised project;
 - 5.5.12 working sites in connection with the construction of the authorised development, construction lay down areas and compounds, storage compounds and their restoration;
 - 5.5.13 car parking areas, welfare facilities, temporary offices and workshops;

- 5.5.14 spoil (including arisings from Work No. 6) and equipment storage;
- 5.5.15 works of restoration;
- 5.5.16 bowzers septic tanks generators and standby generators;
- 5.5.17 ramps and temporary bridges;
- 5.5.18 temporary lighting;
- 5.5.19 works for the provision of apparatus including cabling water and electricity supply networks; and
- 5.5.20 archaeological works.

Ancillary Works

5.6 In addition, the Order is proposed to grant consent for ancillary works, the environmental impact of which have been assessed and recorded in the Environmental Statement, and may be required to be carried out in connection with the Proposed Development. These comprise:

- 5.6.1 temporary landing places, moorings, or other means of accommodating vessels in the construction and/or maintenance of the Proposed Development;
- 5.6.2 marking buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- 5.6.3 temporary works for the benefit or protection of land or structures affected by the Proposed Development.

5.7 A more detailed description of the Authorised Project is provided at Schedule 1 'Authorised Project' of the draft Order and Chapter 4 of the ES Volume 1 (Application Document Ref. 6.2.4) and the areas within which each of the main components of the Authorised Project are to be built is shown by the coloured and hatched areas on the Onshore Works Plans and Offshore Works Plans (Application Document Refs 2.2.1 and 2.2.2).

6. Flexibility in the Order

6.1 The description of Work No.1 refers to the wind generating station having a gross electrical output of over 100 megawatts. This is consistent with sections 14 and 15 of the 2008 Act which stipulates that an offshore windfarm which exceeds an electrical capacity of 100 megawatts will be an NSIP and therefore development consent

will be required for the generating station and the associated development.

- 6.2 It is not considered that imposing an upper limit to the generating capacity is desirable or necessary. There is no reason to limit the electrical output capacity of the Authorised Project provided the physical parameters of development are not exceeded. There are advantages in not imposing an upper limit so that the undertaker can take advantage of technical advancements that emerge in the coming years in terms of wind turbine efficiency which would enable it still to construct the Proposed Development within the existing parameters but to increase capacity beyond that currently anticipated based on existing technology. The maximum number of turbines is, however, specified at 90, which is less than the number of turbines constructed at the existing Rampion 1 offshore wind farm. The current estimated installed capacity is approximately 1200 megawatts.
- 6.3 The flexibility provided in relation to the generating station and its associated development allow the Applicant to take advantage of new developments and emerging products in the market for offshore wind turbine generators and other equipment and as such helps to manage and drive down the cost of offshore wind developments. It also ensures the maintenance of competitive tension in the procurement process driving down costs, and the need to drive down the cost of energy for the purposes of tendering for Contracts for Difference.
- 6.4 The final design of a windfarm depends on a number of factors which include the size, height, and capacity of the chosen turbine type; electrical design; length of cables; areas where development is constrained; and the outcomes of site investigations. All these are considered post-consent at the stage of detailed design and optimisation when the final number and type of turbines and their location will be decided as a function of site constraints and viable layout. However, as provided in the Order, by paragraph 2(2) of Part 3 of Schedule 1, the authorised project will comprise turbines of a uniform height and rotor diameter
- 6.5 This approach has been accepted by the SoS in the Hornsea Three Offshore Wind Farm Order 2020 (**Hornsea Three Order**), the East Anglia One North Offshore Wind Farm Order 2022 (**East Anglia One North Order**), the East Anglia Two Offshore Wind Farm Order 2022 (**East Anglia Two Order**), the Hornsea Four Offshore Wind Farm Order 2023 (**Hornsea Four Order**), the Awel y Mor Offshore Wind Order 2023 (**Awel y Mor Order**) and the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 (**Sheringham and Dudgeon Order**).

Offshore

- 6.6 The Proposed Development as described in Schedule 1 Part 1 of the Order, and the ancillary development described in Part 2 of the Schedule, together with the design parameters secured in requirements 2 to 5 of Part 3 of Schedule 1 provide flexibility in the delivery of the Proposed Development offshore as described above.
- 6.7 The final design of the offshore works will be approved under the provisions of the deemed marine licences.

Onshore

- 6.8 Works No. 6 to 20 describe the onshore associated development for the NSIP within the Order Limits landward of **MLWS**. Part 2 of Schedule 1 specifies ancillary works necessary to connect the generating station to the national grid. The final design of the onshore works will be approved through discharge of requirements set out in Part 3 of Schedule 1 to the Order.
- 6.9 Flexibility is also required for the onshore elements of the development.
- 6.10 With regard to the onshore Oakendene substation comprising Work No.16, the optimal design will be determined through the contracting process. Each tenderer will offer different technologies, designs, and layouts for the onshore substations within the parameters established through the DCO. The detailed design will also require to accord with the content, including the design principles, as established through the Design and Access Statement which is submitted with the application for certification (Application document reference 5.8). This will enable the optimal design solution to be chosen in order to respond to both the functional and technical requirements of the infrastructure and the site location and setting. Final detailed design of the onshore substation will not be settled until after the appointment of a contractor and will be approved through discharge of requirement 8, and the associated requirements for submission and approval of the landscape and ecological management plan for this part of the onshore works (requirement 12) which will also secure the ecological mitigation works for the adjacent land comprising Work No.17.
- 6.11 A similar approach will be adopted for the extension to the National Grid substation at Bolney with the detailed design required to comply with the parameters established through the DCO and the Design and Access Statement as certified (requirement 9). The type of infrastructure to be delivered at the substation will be selected by National Grid to take account of its operational requirements with approval secured through discharge of requirements. National Grid

will also input to the content of the landscape and ecological management plan for Work No.20 and the adjacent area identified for the provision of environmental mitigation works as part of Work 17, in order to take account of its operational requirements.

- 6.12 For Work Nos. 9 and 19, the location and width of the final cable corridor will be identified at the detailed design stage and will be secured through the approval of a code of construction practice and construction method statement for the connection works; this may be approved on a stage specific basis. The codes of construction practice must accord with the principles established in the Outline Code of Construction Practice submitted with the Application (Application document reference 7.2). The detailed design can therefore respond to local conditions and seek to take account of, and minimise impact on, sensitive areas. The construction method statement must accord with the Outline Construction Method Statement (Application Document 7.23).
- 6.13 This flexibility incorporated into the Application for the Order will allow the Applicant freedom to optimise Rampion 2 as technology advances and to take advantage of variability in the supply chain whilst ensuring that the detailed design of the Proposed Development post-consent is delivered in accordance with the parameters set through the Order which have been assessed through the Environmental Impact Assessment.

Policy Support for Flexibility

- 6.14 The use of flexibility in project details within an Order is expressly endorsed by National Policy Statements EN-1 (2011) (at paragraphs 4.2.7 to 4.2.10) and EN-3 (2011) (at paragraphs 2.6.42 to 2.6.45), provided that the variables are fully assessed in terms of worst-case effects. Paragraph 4.2.9 of EN-1 explains that where flexibility is sought, it will be necessary to include appropriate requirements within the Order to ensure that the project "envelope" is limited to that which has been assessed in the Environmental Statement. This approach is reflected in the revised National Policy Statements EN-1 and EN-3 designated in January 2024.
- 6.15 This approach, known as the "Rochdale Envelope," has been followed numerous times in relation to offshore wind farms consented under section 36 of the Electricity Act 1989 and the 2008 Act, as well as NSIPs for diverse other types of infrastructure under the 2008 Act. It is an approach to consenting which is well established under the Town and Country Planning Act 1990, and as such is well known and understood by statutory consultees. It is also endorsed by PINS Advice Note 9² which recognises the need for flexibility to address

²

Advice Note Nine: Rochdale Envelope (republished July 2018 (version 3))

inherent uncertainties for a proposed development, against which the need to ensure that the significant effects of a proposed development have been properly assessed must be balanced. It acknowledges at paragraph 5.5 of that advice note that an Applicant may choose to include parameters within the DCO as a practical way to address uncertainty and provide the required flexibility before setting out example parameters which include *'maximum/ minimum number of turbines, or maximum turbine blade tip height, associated with an offshore wind farm.'*

- 6.16 As the size of turbine has not yet been established for the Proposed Development the environmental impact assessment undertaken has considered the impacts of 65 *'larger'* sized turbines and 90 *'smaller'* sized turbines in order to establish parameters. Each chapter of the Environmental Statement has assessed the worst-case scenario in respect of the potential final design of the project for the aspect under consideration in that chapter, and has also considered whether these worst-case scenarios also apply to a size and number of turbines falling between these two assessed scenarios. Inclusion of a parameter to constrain the maximum rotor swept area for the turbines ensures that a higher number of larger sized turbines cannot be constructed. This means that whilst 65 larger turbines can be installed, installation of 66 would exceed the maximum rotor swept area permitted under the Order and could not therefore proceed.

7. **Parameters**

- 7.1 The maximum number of turbines and their rotor swept area are the key parameters for the project and represent the overarching project description to which all other parameters are subordinate. It is not considered that the inclusion of a minimum number of turbines or capacity would be appropriate; the minimum capacity for an NSIP is already specified by the 2008 Act at 100MW. Further, the economic viability of an offshore wind farm will require a certain scale of development to be delivered.
- 7.2 It is accepted that it is appropriate to impose a maximum hub height, tip height, rotor diameter and a minimum air gap for the wind turbines as these are all key criteria for the assessment of the environmental impact of the Proposed Development and have been presented in the Environmental Statement. These parameters (and the requirement for uniformity of turbine height and rotor swept area) are secured through requirement 2 in Part 3 of Schedule 1 to the draft Order.
- 7.3 Two different foundation types are provided for the WTGs: monopile and multi legged. The choice of foundations will be influenced by a

variety of factors, as explained in Chapter 4 of the Environmental Statement. In terms of the Order, the Applicant has considered which design parameters for each type of foundation are important to ensure a complete and robust EIA, and these have been included in the Order through requirement 2 in Part 3 of Schedule 1.

- 7.4 There will be no more than three offshore substations. Their location, type and design are not capable of being fixed at this stage and will be determined post consent in the detailed design and optimisation process as informed by the ultimate final layout decision. Accordingly, parameters limiting their dimensions and foundation arrangements are included in the draft Order through requirement 3 in Part 3 of Schedule 1 with scour protection secured through requirement 4.
- 7.5 The precise number, layout and total length of the inter-array, export and interconnector cables cannot be fixed until post consent design optimisation. The key factor for assessment purposes is the total cable length, based on the maximum number of turbines and location of the offshore substations, and the maximum lengths have been included as parameters in the draft Order: this is categorised by array cables comprising Work No.2, interconnector cables comprising Work No. 3(b) and export cables (Work Nos. 4 and 5) in requirement 5 in Part 3 of Schedule 1.
- 7.6 It is important to bear in mind that under the deemed marine licences contained in Schedules 11 and 12 of the draft Order, the Undertaker must submit final construction details and secure approval by the Marine Management Organisation (**MMO**) to discharge conditions before construction commences. The MMO must ensure that final construction details conform with the description of Works Nos. 1 to 5 and compliance with the design parameters in Part 2, of the deemed marine licences. Those submitted details will specify the number, dimensions, and layout of the WTGs (for the generation asset licence), offshore electrical substations (for the transmission asset licence), and the network of cables associated with each.
- 7.7 For works in the intertidal area comprising Work No. 6, detailed construction methodologies will need to be submitted for approval of both the relevant planning authority and the MMO pursuant to requirement 22 (code of construction practice) and requirement 23 (construction method statement) as set out in Part 3 of Schedule 1. There will, therefore, be a further stage of regulatory control of the final form of the development seaward of mean high water springs prior to construction.

7.8 The parameters for the Authorised Project within the onshore Order limits landwards of mean high water springs are necessary to allow the project to respond to ground conditions for the onshore works at landfall, ground conditions and sensitive receptors along the cable corridor, and detailed design and layout requirements for the Oakendene substation and Bolney substation extension as the project is undertaken. As noted above the precise footprint and design of the Oakendene substation is not capable of being fixed at this stage and will be determined post consent in the detailed design and optimisation process and secured by requirements. Similarly, the exact footprint and arrangements for the extension to the Bolney substation will require settlement with National Grid and through a post consent approval process. Accordingly, parameters limiting their dimensions are included in the draft Order.

8. Provisions of the Order

8.1 Part 1 of the Order confirms how the Order itself should be referred to, when it comes into force and defines terms used.

8.2 **Article 1** sets out what the Order may be cited as and when it comes into force.

8.3 **Article 2** sets out the meaning of various terms used in the Order. Provisions of particular note are set out below.

8.3.1 'Commence' is defined as follows:

(a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for operations consisting of pre-construction surveys and monitoring approved under the deemed marine licences; and

(b) in respect of any other works comprised in the authorised project, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project

8.3.2 The effect of the definition is that certain 'carved out' works can be carried out offshore prior to certain of the conditions contained in Schedules 11 and 12 to the Order being discharged.

8.3.3 Whilst this definition does not 'carve out' onshore site preparation works, as has been adopted in numerous previously made development consent orders for offshore wind farms, the Order provides for the undertaker to submit and secure approval for stages of the authorised

project pursuant to requirement 10. This provision allows a programme of stages to be identified for the onshore site preparation works, with further stages to be identified for the connection works themselves. This enables the embedded measures identified and assessed in the Environmental Statement to be secured, to the extent necessary, for the preparatory works, and for those works to progress and then inform the details to be submitted for approval in respect of the main onshore construction elements of the authorised project.

8.3.4 'Maintain' is defined to cover both the onshore works and the offshore works. In terms of the deemed marine licences, this term can only relate to the offshore works, but the definitions remain aligned to ensure consistency. In the Order, the term is defined to include inspect and survey, upkeep, repair, adjust, and alter, and further includes remove, reconstruct, and replace, but is limited to the extent assessed in the environmental statement

8.4 Part 2 provides the principal powers for the Proposed Development

8.5 **Article 3 - Development consent etc. granted by the Order**

8.5.1 This article provides the development consent for the 'authorised development' (which is defined to include the associated development) and separate consent for the ancillary works, provided that they are carried out within the Order limits. Together these works comprise the authorised project.

8.6 **Article 4 - Power to maintain the authorised project**

8.6.1 This article makes provision for the maintenance of the authorised project. It has been used in a number of recently approved development consent orders for offshore wind farms including the East Anglia Two Order and the East Anglia One North Order. Article 4 reflects the terms of the model provisions, but text has been added to make it clear that the powers conferred by the article do not negate the need for the Undertaker to obtain further marine licences for offshore works not covered by the deemed marine licences included in the Order. This approach is precedented in numerous recent DCOs including the Hornsea Three, East Anglia One North, East Anglia Two, Hornsea Four Orders the Awel y Mor Order and the Sheringham and Dudgeon Order.

8.7 Article 5 – Benefit of the Order

- 8.7.1 **Article 5(1)** (Benefit of Order) overrides Section 156(1) of the 2008 Act (which is permitted by Section 156(2)) and provides that the benefit of the Order is for the Undertaker, rather than anyone with an interest in the land, subject to the operation of the article.
- 8.7.2 It also provides for the transfer or grant of a lease of the whole or part of the benefit of the Order, with the consent of the Secretary of State (the SoS), subject to certain exceptions. It also provides for the transfer of the whole of the deemed marine licences with the consent of the SoS, also subject to exceptions, and for the Secretary of State to consult the MMO prior to granting consent. This article provides a degree of flexibility for the Undertaker, in terms of the ability to sell or lease the project, and the transmission and generation assets to be owned separately in the future, whilst ensuring the SoS has control over any such arrangements.
- 8.7.3 The requirement to obtain the SoS's consent is unnecessary in the circumstances referred to in sub paragraph (8) of the article. These circumstances include where the transferee or lessee is a holder of a transmission licence under the Electricity Act 1989, so allows the benefit of the Order to be transferred to National Grid insofar as it relates to the connection works at the Bolney Substation. It also allows transfer where the time limits for claims of compensation in respect of the acquisition of land or effects upon land as a consequence of the Order have elapsed.
- 8.7.4 An additional provision has been included within Article 5 to that consent is not required to transfer the benefit of the Order to a company that is wholly owned by or a subsidiary of the Undertaker to allow afford a degree of commercial flexibility in the future. This approach reflects that adopted in the draft development consent order sought for the Sheringham & Dudgeon extension projects.
- 8.7.5 The article also includes a procedure to be adopted when making an application to the Secretary of State for consent and follows the approach in the Hornsea Three Order and which has also been followed in the The Norfolk Boreas Offshore Wind Farm Order 2021 (**Norfolk Boreas Order**), The Norfolk Vanguard Offshore Wind Farm Order 2022 (**Norfolk Vanguard Order**) as well as the East Anglia One North, East Anglia Two and Hornsea Four Orders and the

Sheringham and Dudgeon Order. It is considered necessary to provide certainty in the absence of any other statutory procedure for obtaining consent. The essential elements of this procedure are as follows:

8.7.6 **Article 5(7)** provides that where the Undertaker has transferred the benefit of the Order or granted the benefit of the Order to a lessee then:

8.7.6.1 the transferred benefit will include any rights that are conferred and any obligations that are imposed;

8.7.6.2 the transferred benefit will reside exclusively with the transferee or the lessee and shall not be enforceable against the Undertaker;

8.7.6.3 the benefits or rights conferred under sub paragraph (1) of the article is subject to the same restrictions, liabilities and obligations as applies to the Undertaker.

8.7.7 **Article 5(13)** disapplies sections 72(7) and (8) of the Marine and Coastal Access Act 2009 such that a separate application to the marine licensing authority is not required in connection with transfer of a marine licence pursuant to this article. This wording follows the approach in recent development consent orders for offshore wind farms.

8.8 **Article 6 (application and modification of legislative provisions)**

8.8.1 This article has the effect of dis-applying legislative provisions as they would apply but for this article.

8.8.2 **Article 6(1)(a)** dis-applies the provisions of regulation 6 of the Hedgerows Regulations 1997 and allows those hedgerows specified in Schedule 13 of the Order to be removed so as to allow the Applicant to carry out the Authorised Project. The form of wording used in this article is precedent and has been used in many made orders, including recently in Hornsea Four Order.

8.8.3 **Article 6(2)** dis-applies provisions of the Neighbourhood Planning Act 2017. This disapplication would provide that the temporary possession provisions in that enactment would not take effect at the expense of the temporary possession provisions contained in the Order. The provisions relating to temporary possession in the

Neighbourhood Planning Act 2017 have not yet come into force and that regulations required to provide more detail on the operation of the regime have not yet been made. As such, it is considered appropriate to apply the 'tried and tested' temporary possession regime which has been included in numerous DCOs and Orders made under the Transport and Works Act 1992 to date and the form of wording in this article is has recently been used in the Hornsea Four Order.

8.8.4 **Article 6(3)** confirms that the Order does not constitute a planning permission for the purposed of the Community Infrastructure Levy Regulations 2010 (as amended) notwithstanding that the buildings proposed to be constructed as part of the authorised development are those into which people do not normally go, or buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery. Whilst it is intended that any structures provided pursuant to the Order will be buildings into which people go only intermittently for inspection or maintenance, this article is included for the avoidance of doubt.

8.8.5 The article also disapplies elements of Section 25 of the Burial Act 1857 and the Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950 in order that the mechanism set out in Article 19 will operate in the event that human remains are discovered during the works.

8.9 **Article 7**

8.9.1 This article modifies the Rampion Offshore Wind Farm Order 2014 (Rampion 1 Order). Notwithstanding the scope of the Rampion 1 Order, the operational wind farm (the Rampion 1 project) was not built out to its full permitted extent, either spatially or in terms of number of turbines: only 116 turbines and 1 offshore substation were ultimately installed, and these were not located across the full extent of the consented offshore Order limits.

8.9.2 The Proposed Development is intended to make maximum use of the opportunity to develop a windfarm to generate as much renewable energy as possible taking account of the environmental impacts. Consequently the Applicant proposed the installation of up to 90 wind turbines generators in locations within an array area which includes parts of both the extension area to Rampion 1 identified by

the Crown Estate in its extension leasing round, and other areas of seabed which comprise the balance of 'Zone 6' as identified during the previous Crown Estate leasing round which was not included in the consented area for Rampion 1, or was not built out either under, or in accordance with, the Rampion 1 Order.

8.9.3 Environmental impact assessment for the Proposed Development has taken account of the built extent of the Rampion 1 project (as opposed to its consented extent) in terms of its seascape and landscape visual impact assessment and effects on shipping and navigation, and mitigation is proposed as part of the project by reference to this assessment. As a consequence it is necessary to modify the Rampion 1 Order, pursuant to section 120(5) Planning Act 2008, to restrict the construction of any additional wind turbines pursuant to its terms so as to undermine the mitigation proposed and secured. This restriction will fall away in the event that, having been granted development consent, the Proposed Development is not implemented.

8.9.4 Rampion Offshore Wind Limited, which has the benefit of the Rampion 1 Order, in so far as it is relevant to undertake the construction of further turbines and offshore substations has consented to the terms of this article.³

8.10 **Article 8** (*Defence to proceedings in respect of statutory nuisance*)

8.10.1 This article provides that proceedings may not be brought in respect of statutory nuisance under the Environmental Protection Act 1990 if the alleged nuisance is created in the course of carrying out construction or maintenance or decommissioning of the Authorised Project, and for which notice has been given under section 60 of the Control of Pollution Act 1974, or is a nuisance which cannot be reasonably avoided as a consequence of the construction, maintenance or decommissioning of the Proposed Development as the Authorised Project, or its use.

8.10.2 As stated in the Environmental Statement it is not considered that any properties will be affected beyond statutory nuisance thresholds, as mitigation measures will be used to control noise and dust emissions. However, the Applicant considers that this article should be included in the event that proceedings are brought under Section 82 of the

³ Please see letter dated 7 August 2023 at Appendix 1.

Environmental Protection Act 1990. This article is based a model provision and has been used in numerous DCOs for offshore wind farms.

Part 3 (Streets)

8.11 Article 9 (*Street works*)

8.11.1 This article authorises the Undertaker to carry out various works within the streets specified in Schedule 2 of the Order, which are within the Order limits. The right given by the article is a statutory right for the purposes of Section 48(3) (streets, street works and undertakers) and Section 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991. The Undertaker needs the power to remove or use earth and materials in or under the streets to lay the cables for authorised project under the streets.

8.12 Article 10 (*application of the 1991 Act*)

8.12.1 This article confirms that a number of the provisions of the New Roads and Street Works Act 1991 apply to the carrying out of street works under Article 9 and the temporary closure, alteration or temporary diversion of a street under Article 11. The relevant provisions are referred to in sub-paragraph 2 of Article 9. This approach has been adopted in numerous DCOs for offshore wind farms including the Hornsea Four Order.

8.13 Article 11 (*Temporary closure of streets*)

8.13.1 This article provides for the temporary closure, alteration or diversion of streets for a reasonable time for the purposes of carrying out the authorised development. It follows the approach set out in previous DCOs for offshore wind farms and includes power to use any street temporarily closed as a temporary working site. The Undertaker may not use any street which is referenced in Schedule 3 and shown on the streets plan without first consulting the street authority. For streets not identified in Schedule 3 the Undertaker must obtain the consent of the street authority who may attach reasonable conditions to their consent.

8.13.2 Consequently, for the temporary closure of any street not identified in Schedule 3 there would be a requirement to obtain the consent of the street authority.

8.13.3 Provision is made for compensation for loss as a consequence of the operation of the article. The inclusion of a deeming provision follows the approach taken in recently made orders including the Hornsea Four Order.

8.14 **Article 12** (*public rights of way*)

8.14.1 This article allows the Undertaker, where it is in connection with the carrying out of the Proposed Development, to temporarily close a public right of way specified in Schedule 4 of the Order to the extent stipulated in the same schedule and also requires substitute rights of way to be put in place prior to the temporary closure of specified rights of way. Where the exact location of the closure and substitute way has not yet been determined the article provides for this to be agreed with the highway authority.

8.14.2 The Proposed Development crosses the South Downs Way, and whilst it may be possible to carry out the Proposed Development using a short, defined diversion, in the event that works need to be undertaken requiring temporary closure of a wider stretch of this National Trail, a diversion will be agreed with the South Downs National Park Authority. The two restricted byways are therefore included in the table in Part 3 of Schedule 4 to allow for this flexibility.

8.14.3 Similarly the Proposed Development crosses part of the National Cycle Network. Whilst a diversion has been identified, once the detailed design for the project has progressed post-consent, it may be possible to identify an alternative means of closure and diversion that would have a lesser impact on users. This way is therefore included in the table at Part 3 of Schedule 4 to allow for an alternative diversion to be provided. This article follows the approach adopted in a number of development consent orders including those for offshore wind farms. The ability for the Undertaker to stop up temporarily any other public right of way with the agreement of the relevant highway authority to allow flexibility in the delivery of the Proposed Development is included in the draft Order submitted in respect of infrastructure including the Hinckley National Rail Freight Interchange Development Consent Order.

8.15 **Article 13** (*Access to works*)

8.15.1 This was formerly a model provision and permits the Undertaker to form new or to improve existing means of access in the locations specified in Schedule 5 of the Order. Other means of access or works can also be provided in other locations reasonably required for the Proposed Development with the approval of the relevant planning authority, in consultation with the highway authority. This is subject to a deemed approval in the absence of a notification from the relevant planning authority within 45 days, with a longer period allowed to account for the requirement to consult a consultee before discharge. This follows the approach adopted in recently made orders including the East Anglia One North and East Anglia Two Orders and the Norfolk Vanguard and Boreas Orders.

8.16 **Article 14** (*Agreements with street authorities*)

8.16.1 This article allows the Undertaker to enter into agreements with street authorities relating to any closure, alteration or diversion of a street and the carrying out of any works referred to in Article 9(1). This approach has been adopted in a number of DCOs for offshore wind farms including the recently made Hornsea Four Order.

8.17 **Article 15** (*Power to alter layout etc. of streets*)

8.17.1 This article allows for the alteration of the layout of any street for the purposes of construction, operation, or maintenance, subject to obtaining the consent of the street authority, and to the restoration of such streets to the reasonable satisfaction of the street authority. This follows the approach adopted in numerous DCOs including the recently made Hornsea Four Order and the Hornsea Three Order. A similar approach is adopted in the Drax Power (Generating Stations) Order 2019, the Great Yarmouth Third River Crossing Development Consent Order 2020 and the Longfield Solar Farm Order 2023 save that in those Orders the provision also refers to a schedule where alterations will be required. However, each of these Orders also includes the general power which is included in article 15.

8.17.2 Article 15 also include provision for consent to be deemed granted in the absence of a notification of a decision from the street authority as is consistent with other provisions in Part 3 of the Order.

8.18 **Article 16** (*Speed Limits*)

- 8.18.1 This article enables temporary speed limits to be implemented during construction by agreement with the relevant highway authority. The inclusion of the Article is permitted by section 120(3) of the 2008 Act, since the regulation of speed limits is necessary to facilitate the construction of the authorised project the various highways is related to the provision of the highway works as part of the authorised development. The requirement for imposition of temporary speed limits is also related to the creation of accesses for construction works, and is therefore permitted by section 120(4) and paragraph 15 of Part 1 of Schedule 5 of the 2008 Act. The article enables the imposition of temporary speed limits over some stretches of highway which are not within the Order limits. This is because the operation of these powers does not require physical development.
- 8.18.2 This approach is consistent with The Northampton Gateway Rail Freight Interchange Order 2019/1358 and The West Midlands Rail Freight Interchange Order 2020/511 albeit the powers in these Orders also include provision for the imposition of permanent speed limits too.

Part 4 (Supplemental Powers)

8.19 **Article 17** (*Discharge of water*)

- 8.19.1 **This article** is based on a former model provision and enables the Undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the Authorised Project with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. A deemed approval applies if notification is not received within 28 days. It follows the approach adopted in a number of recent orders made for offshore wind farms in respect of main rivers and incorporates reference to work in other watercourses following the approach in the East Anglia Two and One North Orders and the Hornsea Four Order.

8.20 **Article 18** (*Protective work to buildings*)

- 8.20.1 This article is based on a former model provision that allows the Undertaker, at its own expense, to carry out

protective works to any building which is affected by the Proposed Development. Such protective works can be undertaken at any time before or during the carrying out in the vicinity of the relevant building works forming part of the Proposed Development. Protective works can also be undertaken after the carrying out the of works forming part of the Proposed Development for a period of 5 years from the day on which the relevant part of the Proposed Development first becomes operational.

8.20.2 In addition to the powers to undertake protective works the article includes powers to enter any building and land within its curtilage to survey to determine whether protective works are needed and there are powers to enter adjacent land to carry out any protective works. However, there is a requirement, before utilising the powers in the article, to serve notice on owners and occupiers with at least 14 days' notice of the said works. In respect of some of the powers included in the article there is an ability for a counter notice to be served by the landowner/occupier within a period of 10 days from the day on which the notice was served.

8.20.3 The article includes compensation provisions both in relation to the consequences of the protective works being undertaken, but also where protective works are undertaken but they are inadequate to protect the building or land from damage (within a period of 5 years from the date that part of the development is first operational).

8.20.4 The model provision has been modified to provide that section 13 (refusal to give possession to acquiring authority) of the Compulsory Purchase Act 1965 applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act. In this context the article follows the approach adopted in recent DCOs including the Hornsea Four Order.

8.21 **Article 19** (*Authority to survey and investigate the land onshore*)

8.21.1 This article is based on a former model provision and allows the Undertaker to survey and investigate land, including bringing equipment onto the land and making trial pits and boreholes. It has been expanded to allow for the carrying out of surveys and investigation by drone.

The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation.

- 8.21.2 Sub paragraph (4) provides that no trial pits or boreholes may be made in land forming part of a railway or land, in Crown land, or in a street or highway without the consent of Network Rail, the Crown, the street authority or the highway authority, respectively. Consent may not unreasonably be withheld. The deeming provision does not extend to Network Rail or the Crown.
- 8.21.3 Section 13 (refusal to give possession to acquiring authority) of the Compulsory Purchase Act 1965 will apply in respect of entry onto, or possession of land under the article. This approach follows that adopted in a number of recent Development Consent Orders including the Hornsea Four Order.
- 8.21.4 **Article 20** (*Removal of human remains*) enables the Undertaker to remove human remains from the Order land and provides a process for notification and identification of the human remains as well as their re-internment or cremation. The Undertaker would be required to pay the reasonable expenses associated with this process.
- 8.21.5 Whilst it is not anticipated that any human remains will be encountered during construction works, it is possible that human remains could be found within the Order land. This article follows the former model provisions, save that the article applies to the entire Order land rather than a defined area which approach was used in the Norfolk Vanguard and Norfolk Boreas Orders.

8.22 **Article 21** (Public rights of navigation)

- 8.22.1 This article provides for the suspension of public rights of navigation where any of the permanent structures (WTGs or offshore substations) are located. Public rights of navigation apply in territorial waters, being the area 12 nautical miles from mean high water springs, so apply to part of the Proposed Development's offshore Order limits.
- 8.22.2 As there will be a physical obstruction in the marine environment within this area there will no practical ability to navigate through these specific locations and the approach to suspend public rights of navigation formalises this situation. The final locations of structures including WTG foundations and the offshore substations will be

submitted for approval under condition 11 of each of the deemed Marine Licences in Schedules 11 and 12 for the generation assets and transmission assets respectively.

8.22.3 Implementation of the suspension to public rights of navigation fourteen days after giving notice to the SoS, Trinity House, the MMO and the Maritime and Coastguard Agency is appropriate to allow construction to commence as soon as reasonable following consultation and approval of the locations of structures under condition 11 of each deemed marine licence. The MMO, the MCA and Trinity House as the key marine stakeholders for public rights of navigation will have been involved in the process of finalising the design and layout of the wind farm infrastructure, and will therefore already be aware of the locations of the elements that will impact on public rights of navigation. In addition, this notice period is greater than that required for formal notices to mariners and the period required by the UKHO to make all necessary amendments to nautical charts as set out in condition 5 of each deemed marine licence (Notifications and inspections). This period has been accepted on other DCOs with infrastructure in territorial waters, including Kentish Flats Extension Offshore Wind Farm Order 2013 and Walney Extension Offshore Wind Farm Order 2014.

8.23 **Article 22** (temporary suspension of public access to access land)

8.23.1 This article provides for the suspension of public access to specified areas of access land during the construction and maintenance of the authorised project, subject to advance notice being provided and subject to the Undertaker keeping the area of land and the period of closure to a minimum. This article follows the approach taken and accepted in the Rampion 1 Order.

Part 5 (Powers of Acquisition)

8.24 **Article 23** (*Compulsory acquisition of land*)

8.24.1 This article provides for the compulsory acquisition of such land as is required for the Proposed Development (or to facilitate the Proposed Development or is incidental to the Proposed Development). Article 25 makes consequential provision for the extinguishment of rights in the land in order to ensure that they cannot impact on implementation or use of the Proposed Development. The article broadly follows the former model provision and follows the approach adopted in the Norfolk Vanguard

Order and other recently granted Orders. The power to acquire land compulsorily under Article 23 does not apply to the parts of the Order land shown numbered 34/29 and 34/30 on the land plans.

8.25 **Article 24** (*Time limit for exercise of authority to acquire land compulsorily or to take land temporarily*)

8.25.1 This was formerly a model provision and imposes a time limit of 7 years for the exercise of powers of compulsory acquisition. There is one departure from the model provision and that is that the time limit has been extended from 5 years to 7 years. This extra time is due to the complexity and scale of the project, and at this stage, unknown contractor and supply chain availability and the need to enter into Contract for Difference bidding rounds. This change is preceded in the Hornsea Three Order and the Hornsea Four Order as well as the recently made Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024. Equivalent issues relating to complexity, scale, contractor and supply chain availability as cited by those projects apply to Rampion 2.

8.26 **Article 25** (*Compulsory acquisition of rights and imposition of restrictive covenants*)

8.26.1 This article entitles the Undertaker to acquire rights over land and impose restrictive covenants which may be compulsorily acquired, including rights already in existence, or to create new rights. The article provides that in respect of the Order land specified in Schedule 7 of the Order the Undertaker's powers of acquisition are limited to the purposes specified in that same schedule. The ability to acquire new rights ensures that the Undertaker can seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) as the Authorised Project is implemented.

8.26.2 Sub paragraphs (5) and (6) provide, where the acquisition of new rights or the imposition of a restriction under the Order is required for a statutory undertaker, the Undertaker may, with the consent of the SoS transfer the powers to the statutory undertaker. The approach adopted in the article follows that of the East Anglia Two and East Anglia One Orders, the Norfolk Vanguard and Boreas Orders, and the Hornsea Four Order.

8.27 **Article 26** (*Private rights over land*)

- 8.27.1 This article is based on a former model provision and has the effect of extinguishing private rights over land where: (1) land is subject to compulsory acquisition under article 23 of the Order; or (2) land is subject to compulsory acquisition of rights or the imposition of restrictive covenants under article 25. The article also suspends private rights for as long as the Undertaker is in temporary possession of land under the Order.
- 8.27.2 In sub-paragraph (4) reference is made to section 152 of the 2008 Act to make it clear that compensation is payable and that such compensation would be payable under this section of the 2008 Act rather than the Compulsory Purchase Act 1965.
- 8.27.3 The reference to this article including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect follows the approach recently adopted in Portishead Branch Line (MetroWest Phase 1) Order 2022.

8.28 Article 27 (*Power to override easements and other rights*),

- 8.28.1 This article provides that, by virtue of section 158 of the 2008 Act, in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the Undertaker (or any person deriving title from the Undertaker or any contractor, servant or agent of the Undertaker) may interfere with any interest or right to which the article applies or breach any restriction as to the use of land arising by virtue of a contract. It also provides that, by virtue of section 152 of the 2008 Act, compensation may be payable under section 10 of the 1965 Act for any such interference or breach.
- 8.28.2 This is not a model provision but is included to clarify the position regarding rights burdening land required for the authorised development. The article has precedent in article 20 of the Brechfa Forest Wind Farm Connection Order 2016 and is included in the draft development consent order submitted as part of the application for Cambridge Waste Water Treatment Plant Relocation Order.

8.29 Article 28 (*Application of the 1981 Act*)

- 8.29.1 This article applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order. It gives the Undertaker the option to acquire

land via the process set out under the 1981 Act, rather than the notice to treat procedure. This article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016.

8.29.2 The article has also been modified to allow the compulsory acquisition of rights and land in favour of a third party such as a statutory undertaker. These provisions are not contained in the Model Provisions but are intended to provide confirmation that the 1981 Act can be used to acquire rights and land on behalf of third parties, without the need to acquire the land in favour of the Undertaker and then transfer such land or rights to a third party, thereby causing a delay to any transfers of land or rights to those who are intended to benefit from such acquisition.

8.30 **Article 29** (*Modification of the Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017*)

8.30.1 This article modifies the Compulsory Purchase of Land (Vesting Declaration) (England) Regulations 2017 to ensure that the interests and rights in land which are intended to benefit a third party, such as a statutory undertaker whose apparatus may be re-located in order to construct the authorised development, will vest in that third party instead of the Undertaker, who would otherwise be the acquiring authority in respect of those interests and rights. The amendments to these regulations also confirm the position that notwithstanding references in the 1981 Act and 2017 Regulations to vesting land “in themselves” (i.e., in the Acquiring Authority), land and rights can be acquired by the Undertaker in favour of any third party identified directly. This is a drafting change which confirms the ability for the Undertaker to acquire such rights and land (where such powers of acquisition are not transferred to another person to acquire rights/land directly) and is not a substantive change to the rights or land sought for permanent acquisition.

8.31 **Article 30** (*Modification of Part 1 of the 1965 Act*)

8.31.1 This article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (4) makes it clear

that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 33 or 34 of this Order.

8.31.2 The approach adopted follows that of the Hornsea Three Order in addition to previously granted orders for NSIPs, and which has been applied in a similar form in the East Anglia Two and East Anglia One North Orders, and the Norfolk Boreas and Vanguard Orders.

8.32 Article 31 (*Acquisition of subsoil or airspace only*)

8.32.1 This article permits the Undertaker to acquire only the subsoil or airspace of land which is to be compulsorily acquired (either pursuant to Article 23 or 25) and gives the Undertaker the ability to minimise the extent of interests acquired from owners. This is based on a former model provision but extended to include the acquisition of airspace and has been used in a number of DCOs including the Norfolk Vanguard and Boreas Orders and the East Anglia Two and One North Orders.

8.33 Article 32 (*Rights under or over streets*)

8.33.1 This is a former model provision which allows the Undertaker to enter on and appropriate interests within streets where required for the purpose of the Authorised Project without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances.

8.34 Article 33 (*Temporary use of land for carrying out the authorised development*)

8.34.1 This article allows two categories of land to be temporarily used for the carrying out of the Authorised Project. These are:

8.34.1.1 The land specified in Schedule 9 of the Order for the purposes specified in that Schedule;

8.34.1.2 Any other land within the Order limits land where no notice of entry or general vesting declaration has been served.

8.34.2 In addition to the ability to enter on and take temporary possession of Order land Article 33(1)(b)-(h) stipulate various activities that can be undertaken pursuant to

the article. This list has been modified from the former model provision to include project specific activities, the approach adopted in the Hornsea Three Order and tailored for the Proposed Development. The power to enter on and take temporary possession of Order land where no notice of entry or general vesting declaration has been served is subject to sub-paragraph 2, which provides that such powers do not apply to the parts of the Order land shown numbered 34/29 and 34/30 on the land plans.

8.34.3 Sub-paragraph 11 provides that the Undertaker may not compulsorily acquire any of the land specified in Schedule 9, ~~except that the Undertaker may acquire new rights or impose new restrictive covenants over the Order land shown numbered 2/28, 33/14 and 33/16 on the land plans for the purposes specified in relation to that land in column (2) of that Schedule.~~

8.34.4 There is a limit on the length of time that the Undertaker can use land under this article, being a period of 1 year beginning on the day of completion of that part of the Authorised Project, unless the Undertaker has already served a notice to treat or general vesting declaration.

8.34.5 In addition, the article includes several other components, including:

8.34.5.1 the Undertaker must provide at least 28 days' notice to the relevant owner/occupiers' before entering the land;

8.34.5.2 before giving up occupation of land the Undertaker must remove the temporary works and restore the land to the reasonable satisfaction of the owner save that certain operations are not required to be removed; and

8.34.5.3 compensation provisions are included to compensate owner/occupiers affected by their land being temporarily used for carrying out the Authorised Project.

8.35 **Article 34** (*Temporary use of land for maintaining the authorised project*)

8.35.1 Similar provision is made in Article 34 (for the temporary use of land for maintenance of the Authorised Project (once consented). The maintenance period in which the power can be exercised is beginning with the date on which the

Authorised Project first exports electricity to the national electricity transmission network. The article is a former model provision and allows an Undertaker to take temporary possession of land within the Order limits if it is reasonably required to maintain the Authorised Project and allows temporary works and buildings to be constructed if reasonably necessary. The power is limited and cannot be exercised in respect of a house, garden, or any other building where it is occupied.

8.35.2 The article requires the Undertaker to provide at least 28 days' notice to the relevant owner/occupiers' before taking temporary possession, and it may only retain possession for as long as is reasonably necessary to carry out the maintenance. When returning the land after the temporary possession the Undertaker must remove temporary works and restore the land to the reasonable satisfaction of the owners. Compensation provisions are included.

8.36 **Article 35** (Compulsory acquisition of land - *incorporation of the mineral code*)

8.36.1 This article provides for the incorporation of Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 to be incorporated into the Order to exclude its application to mines under the Order limits.

8.37 **Article 36** (*Statutory undertakers*)

8.37.1 This is based on the former model provision which has been used in numerous previous Orders for offshore wind farms and provides for the acquisition of land belonging to statutory undertakers that is identified in the Book of Reference (Application Document Ref. 4.3). This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. This article is subject to the protective provisions (see Article 52 below) included at Schedule 10 of the Order.

8.38 **Article 37** (*Apparatus and rights of statutory undertakers in stopped up streets*)

8.38.1 This provision governs what happens to statutory undertakers' apparatus (e.g., pipes, cables) under streets that are stopped up by the Order. Without the article, the statutory undertaker would not have access to the apparatus, since there will no longer be a right of way along the street. Under paragraph (2), the statutory undertaker

may remove, relocate, or replace any affected apparatus of its own volition, or must do so if it is reasonably requested by the Undertaker. Under paragraph (3), the statutory undertaker would receive compensation from the Undertaker for any relocation works and associated costs subject to any set off for enhancement works undertaken at the same time subject to clarification in paragraphs (4) and (5).

8.38.2 This article is a standard provision for DCOs (see, for example, Article 36 of the A30 Chiverton to Carland Cross Development Consent Order 2020) save that as the Proposed Development does not include major highways bridge or transport works these elements of the provision are not applied.

8.39 **Article 38** (*Recovery of costs of new connections*)

8.39.1 This article provides that persons who must create a new connection following the exercise of powers under Article 36 may recover the costs of new connections from the Undertaker and follows the wording of a former model provision used in numerous orders for offshore wind farms.

8.40 **Article 39** (*Special Category Land*)

8.40.1 This provision applies to land to which section 132 of the 2008 Act applies: an order granting development consent is subject to Special Parliamentary Procedure when it authorises compulsory acquisition of a right over land comprising a common, open space or fuel or field garden allotment unless the Secretary of State is satisfied that certain tests under sections 132(3)-(5) are met. These tests include that the Secretary of State is satisfied that the use of the land when burdened by the new rights is no less advantageous than it was beforehand. The Applicant submits that this is the case, for the reasons set out in the Statement of Reasons (Application Document reference 4.1).

8.40.2 The land specified in Article 39 is therefore proposed to be released from all rights, trusts and incidents to which that land was previously subject without the requirement to provide replacement land in accordance with section 132(4) of the 2008 Act.

Part 6 (Operations)

8.41 **Article 40** (*Operation of generating station*)

8.41.1 This article authorises the operation and use of the offshore wind turbine generating station comprised in the Authorised Project. Article 40(2) specifically preserves the need for the Undertaker to obtain any other operational consent that may be needed, in addition to the Order.

8.42 **Article 41** (*deemed marine licences under the 2009 Act*)

8.42.1 This article deems the grants of the marine licences included in schedule 11 (*deemed marine licence – generation assets*) and schedule 12 (*deemed marine licence – transmission assets*). The deemed consent is provided for under 149A of the 2008 Act and under section 65 of the Marine and Coastal Access Act 2009, the successor provision to section 34 of the Coast Protection Act 1949.

Part 7 (Miscellaneous and general)

8.43 **Article 42** (*Application of landlord and tenant law*)

8.43.1 This article is based on a former model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the Authorised Project or the right to operate the same or any agreement entered into by the Undertaker for the construction, maintenance, use or operation of the Authorised Project.

8.44 **Article 43** (*Operational land for purposes of the 1990 Act*)

8.44.1 This article is based on a former model provision which has the effect of ensuring that the land on which the Authorised Project is constructed will be "operational land" under section 263 of the 1990 Act.

8.45 **Article 44** (*Felling or lopping of trees and removal of hedgerows*)

8.45.1 This article provides that the Undertaker may fell or lop or cut back the roots of any tree or shrub which is within the Order limits or near any part of the authorised project to prevent it obstructing or interfering with the onshore site preparation works, construction, maintenance, or operation of the Authorised Project or its decommissioning. The article is consistent with the former model provision, except the Undertaker has further limited the power so that it does not apply to trees subject to a tree preservation order which are instead subject to article 45 (*Trees subject to a tree preservation order*). The article

also authorises removal of hedgerows within the Order limits as identified in Schedule 13. The application of this article is controlled through requirements, notably requirement 22 securing stage specific codes of construction practice and requirement 12 securing stage specific landscape and ecology management plan, in both instance with the stage specific documents to accord with the outline documents to be certified under Article 51 (see below).

8.46 **Article 45** (*trees subject to tree preservation orders*)

8.46.1 Similarly, this article provides that the Undertaker may fell or lop or cut back the roots of any tree, within the Order limits, which is subject to a tree preservation order to prevent it obstructing or interfering with onshore site preparation works, the construction, maintenance or operation of the Authorised Project or its decommissioning. This applies whensoever the tree preservation order is made and so future proofs the scheme. The operation of this article is also controlled by the documents and details to be submitted and approved pursuant to the requirements.

8.46.2 In both Articles 44 and 45 no unnecessary damage must be caused, and compensation is payable if loss or damage is caused. The articles follow the approach adopted in numerous DCOs including the East Anglia Two and One North Orders, the Norfolk Vanguard and Boreas Orders, the Hornsea Four Order and the recently made Sheringham and Dudgeon Order.

8.47 **Article 46** (*Abatement of works abandoned or decayed*)

8.47.1 This article is intended to make sure that the Undertaker will not abandon or allow to fall into decay Work Nos 1 to 6. It provides a power which enables the SoS, following consultation with the Undertaker, to serve notice on the Undertaker requiring it, at its own expense, to remove or restore those works. Section 105 of the Energy Act 2004 makes provision for the SoS being able to serve notice on the Undertaker requiring it to submit a decommissioning programme for approval. The provisions of this article do not cut across this statutory provision but supplement it and follow the approach adopted in the East Anglia Two and One North Orders, the Norfolk Vanguard and Boreas Orders, and the Hornsea Four Order.

8.48 **Article 47** (Procedure in relation to certain approvals)

8.48.1 This article introduces and gives effect to schedule 14, which provides a procedure for securing approvals under the terms of Part 3 of Schedule 1 to the Order. The schedule follows the approach recommended in Planning Inspectorate Advice Note fifteen: Drafting Development Consent Orders and its annex⁴.

8.49 **Article 48** (Arbitration)

8.49.1 This article provides a procedure for arbitration in respect of any differences arising under the Order which follows the approach adopted in the East Anglia Two Order, the East Anglia One North Order and the Hornsea Four Order. The process provides certainty to all parties. It applies Schedule 15 of the Order and provides for the process set out therein to be applied to differences under the Order unless another means of resolving a dispute is provided for in the Order. It expressly excludes any matter that requires the approval of the SoS or the MMO.

8.50 **Article 49** (Saving provisions for Trinity House)

8.50.1 This is a model provision for harbours and is commonly used in DCOs for offshore wind farm turbine generating stations to provide protection to Trinity House in relation to its statutory functions.

8.51 **Article 50** (Crown rights)

8.51.1 This article reflects the terms of section 135 of the 2008 Act and has been used in a number of previous orders for NSIPs including the Hornsea Three Order and the Hornsea Four Order. The intention is to protect the Crown in respect of its land and interests, both where it holds the land and where it is held by another person (such as a government department). It provides that nothing in the Order authorises the Undertaker (or licensee of the Undertaker) to interfere with any land or rights in that land as follows:

8.51.1.1 Where that interest belongs to His Majesty in right of the Crown and forms part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

8.51.1.2 Where it belongs to His Majesty in right of the Crown, but does not form part of the Crown Estate without the consent in writing of the

⁴ Republished July 2018 (version 2)

government department that is managing that land; or

8.51.1.3 Where it belongs to a government department or is held in trust for His Majesty for the purposes of a government department without the consent of that government department.

8.51.2 Sub-paragraph (2) provides that the prohibition in sub-paragraph (1) of the article does not apply where it is proposed to compulsorily acquire an interest in Crown land which is held by a person which is not His Majesty in right of the Crown or it is not being held on the Crown's behalf, provided consent is provided in writing by the appropriate Crown authority.

8.52 Article 51 (*Certification of plans and documents, etc.*)

8.52.1 This article is based on a former model provision which requires the submission of various documents referred to in the Order, which are set out in Schedule 16 to the Order, for certification as true copies.

8.53 Article 52 (*Protective provisions*)

8.53.1 This article introduces Schedule 10 to the Order which protects the interests of certain statutory undertakers, to have effect; this Schedule is also referred to in Article 36 above in relation to the apparatus of statutory undertakers. Further detail is given below.

8.54 Article 53 (*Funding*)

8.54.1 This article provides that the Undertaker may not exercise a number of powers prior to it putting into place a guarantee equal to liabilities upon the Undertaker to pay compensation under the relevant provisions (such sum to be approved by the SoS) or an alternative form of security approved by the SoS for a period of 15 years.

8.55 Article 54 (*No double recovery*)

8.55.1 This article prevents compensation being payable in respect of the same matter both under the Order and under any other enactment, contract or rule of law and is included for certainty.

8.56 Article 55 (*Disregard of certain improvements, etc.*)

- 8.56.1 This article provides for the Lands Chamber of the Upper Tribunal to disregard certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation. It complies with section 126 of the 2008 Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation.
- 8.56.2 The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 37), the River Humber Gas Pipeline Replacement Order 2016 (article 29) and the Lake Lothing (Lowestoft) Third Crossing Order 2020 (article 38). The wording of this article mirrors section 4 (assessment of compensation) of the Acquisition of Land Act 1981 (in this paragraph "the 1981 Act").
- 8.56.3 It is necessary to specifically apply the effect of section 4 of the 1981 Act in the Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and neither the 2008 Act, nor standard Order provisions, apply these. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the 2008 Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

8.57 **Article 56** (*Set off for enhancement in value of retained land*)

- 8.57.1 This article provides that, in assessing the compensation payable to any person in respect of the acquisition of any land, the Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development. This article complies with section 126(2) of the 2008 Act as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation.
- 8.57.2 The principle in this article is established in section 7 of the Land Compensation Act 1961 (effect of certain actual or prospective development of adjacent land in same ownership), which needs to be applied. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the 2008 Act allow the application in a DCO of statutory

provisions which relate to the payment of compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 38) and the Lake Lothing (Lowestoft) Third Crossing Order 2020 (article 39), and orders under the Transport and Works Act 1992 such as the London Underground (Northern Line Extension) Order 2014 (article 33) and the Midland Metro (Wolverhampton City Centre Extension) Order 2016 (article 36).

8.58 **Article 57** (*Service of notices*)

8.58.1 This article makes provision as to the service of notices or other documents for the purposes of the Order.

8.59 **Article 58** (*Inconsistent planning permissions*)

8.59.1 Article 58(1) allows the development of the authorised project to take precedence over the conditions of any planning permissions which are inconsistent with the authorised development. The provision applies from the date on which the proposed development is commenced in order that the Proposed Development has certainty over the ability to proceed whilst not unnecessarily constraining other consents granted under the Town and Country Planning Act 1990.

8.59.2 The article also provides that where planning permission is granted in respect of land within the Order limits for development which is consistent with the authorised development but the environmental impacts exceed those assessed in the environmental statement, or which is otherwise consistent with the authorised development, or for development which is unrelated to the authorised development, then the implementation of that consent will not render development pursuant to the Order incapable of further implementation. This wording is deemed necessary and considered prudent following the Supreme Court ruling in *Hillside Park v Snowdonia National Park Authority* [2020] EWCA Civ 1440 so as to allow for a discrete planning permission to be granted and implemented for part of the Proposed Development, for which a separate environmental impact assessment has been carried out, without the undertaker losing the ability to continue to construct the remainder of the Proposed Development. The term 'inconsistent planning permissions' is the term used in the *Hillside Park* case. A clarification has been included that the requirements set out Part 3 of Schedule

1 (requirements) shall not apply to development carried out pursuant to such a planning permission in response to the National Grid's response to the Examining Authority's First Written Questions [REP3-077].

8.59.3 The article also provides that development carried out pursuant to a planning permission following implementation of the draft DCO would not result in breach of the Order, removing the risk of criminal liability pursuant to sections 160 and 161 of the 2008 Act in circumstances where the development which has been appropriately assessed and consented can be carried out on land within the Order limits without impact on the Proposed Development. This includes any development authorised by a general development order as well as an express planning permission. The article has its basis on provisions included in the Northampton Gateway Rail Freight Interchange Order 2019 and West Midlands Rail Freight Interchange Order 2020.

9. Schedules

9.1 **Schedule 1** describes the Proposed Development in detail, split into

9.1.1 Part 1, which describes the works which will comprise the Authorised Development by reference to:

9.1.1.1 a number of 'Work numbers', each of which represents different elements of the Authorised Development, and

9.1.1.2 a description of the associated development related to the offshore and onshore works;

9.1.2 Part 2 which describes ancillary development.

9.2 This split of the Authorised Project between different work numbers and associated development separately enables the Order to refer to distinct parts of the Authorised Project by citing the relevant work number and for the various works as authorised to be identified by reference to the Works plans.

9.3 The ancillary development does not form part of the Authorised Development for which development consent is needed, but the works listed in this section comprise works which are required to be carried out to facilitate the development of the Authorised Development.

- 9.4 The works set out in Parts 1 and 2 of Schedule 1 to the Order are explained in paragraph 5 above.
- 9.5 Part 3 of Schedule 1 sets out the requirements which apply to the construction and operation of the Authorised Project under the Order, its maintenance, and subsequent decommissioning. As noted above in section 6, requirements 2 to 9 specify the parameters which apply to the Authorised Project.
- 9.6 The remaining requirements are closely related to the mitigation set out in the ES (Application Document Ref. 6) and the Commitments Register (Application Document Ref. 7.2). Prior to describing the individual requirements it is appropriate to consider requirement 10. This requires the submission of a programme identifying the stages of works, in accordance with which the various stages of the onshore works will be constructed. The approved details then operate to enable the submission of details pursuant to a number of the requirements, and their approval, on a staged basis so as to allow onshore site preparation works and subsequent construction to proceed on a similarly staged basis. The requirement draws a distinction between onshore site preparation works and other works comprising the onshore works to enable distinct programmes to be submitted so as to allow a proportionate level of detail to be submitted and approved in respect of preparatory works, the outcome of which will inform the detail to be submitted for the remaining works.
- 9.7 Submission of details is to be to the relevant planning authority, which includes the South Downs National Park Authority for the stages of the cable route in the South Downs National Park and in respect of closure or diversion of the National Trail, or the highway authority (following consultation with the South Downs National Park Authority where necessary) depending on the substance and location of the matter requiring approval. A submission may cover more than one stage of the Authorised Project.
- 9.8 This approach permits an appropriately flexible approach to the discharge of requirements by the Undertaker and an appropriate balance between the details which are required to be provided in respect of solely onshore site preparation works, with more substantive development works not starting until further details are approved, and also allowing development in discrete parts of the Authorised Project (where details are already approved) to commence.

- 9.9 Many of the requirements provide for a document (such as details, a method statement, a plan, a programme, or scheme) specifying how the Undertaker will construct, operate, or maintain the relevant part of the Authorised Project to be submitted for approval to the relevant discharging authority, on a staged basis. The model provisions have been adapted throughout to provide that it is for the specified discharging authority to approve the relevant document rather than the Planning Inspectorate (in place of the Infrastructure Planning Commission).
- 9.10 The Order has also been drafted to provide that where consultation is required under the draft Order it is, in each case, the relevant discharging authority's duty to carry out the consultation prior to approving a document submitted to it (rather than this being the Undertaker's duty before submitting the document). Where it is considered that it would be particularly relevant for the relevant discharging authority to consult a third party, that third party has been named within the relevant requirement.
- 9.11 In all cases where a scheme or plan is to be submitted for approval to an approving authority there is a requirement for the Undertaker to implement the approved scheme or plan.
- 9.12 A similar staged approach to discharge of Requirements has been followed in a number of orders for NSIPs including the Hornsea Three Order and subsequent orders including the Hornsea Four Order, East Anglia One North and Two Orders and the recent Sheringham and Dudgeon Order.
- 9.13 The requirements imposed in Part 3 of Schedule 1 to the Order can be summarised as follows:
- 9.13.1 Requirement 1: ~~*Time limits*~~*Commencement of the authorised project* – This requirement is based upon the model provisions and required that the authorised project must be commenced within 7 years beginning with the date that the Order comes into force. As described above, this implementation period is considered appropriate for the circumstances of the Proposed Development;
- 9.13.2 Requirements 2 to 4: *Detailed offshore design parameters* – These requirements set out the detailed design parameters within which the Authorised Project must be constructed. In summary the design parameters are as follows:
- 9.13.2.1 Requirement 2 sets out the maximum design parameters for the WTGs including a minimum separation distance. Whilst this distance is less

than the distance that would apply to either of the types of WTGs that have been assessed in the environmental statement, this is the absolute minimum distance that would be permitted even if smaller wind turbines were installed. It also secures that, notwithstanding the different scenarios assessed in the Environmental Statement, the project comprises turbines of uniform height and rotor diameter;

9.13.2.2 Requirement 3 sets out the maximum design parameters for the offshore substations;

9.13.2.3 Requirement 4 sets out the maximum scour protection for offshore substations by way of footprint and volume.

9.13.3 Requirement 5 stipulates the maximum number of cable circuits and stipulates the maximum length of the cables compromised in Work Nos. 2 to 5. Further it sets out the total area and volume of cable protection. The total number of cable crossings is limited to 4, unless agreed otherwise with the MMO.

9.13.4 Requirement 6 confirms that Works numbered 6 and 7 (the export cable installation under the intertidal area and beach at Climping) will be installed by horizontal directional drilling in accordance with the assessment in the environmental impact assessment and reported in the Environmental Statement. There may only be 4 completed drills. The requirement also confirms that in all other locations along the cable corridor the cables will be installed underground: this is to reduce visual impact particular in, and from, the South Downs National Park. It secures the use of trenchless technology to pass certain obstacles and sensitive receptors as specified in the crossing schedule (Application Document Ref. 6.4.4.1). It also confirms the maximum number of joint bay locations and link boxes, which will be the only visible elements associated with the cable installation following construction and reinstatement of the land required temporarily for the construction works.

9.13.5 Requirement 7 confirms the parameters for onshore substations, including the maximum fenced area for the substation comprising Work No. 16 and the total area for the substation extension comprising Work No. 20.

- 9.13.6 Requirement 8 secures that works to construct the onshore substation comprising Work No. 16 (excluding any onshore site preparation works) cannot commence until the relevant planning authority has approved various design details (following consultation with the West Sussex Fire and Rescue Service). Any onshore site preparation works to be undertaken in the substation locations would need to be approved as part of a stage of works comprising the substation works identified pursuant to requirement 10.
- 9.13.7 The pre-commencement details required for submission go beyond those which comprise reserved matters following the grant of outline planning permission. In addition, the details submitted must be in accordance with the design principles set out in the Design and Access Statement submitted with the Application (Application Document Ref. 5.8). The parameters for the development footprint and built structures are provided in this requirement.
- 9.13.8 In addition, the detailed design for the onshore substation must include details for how the design will take account of climate change allowances, the relationship between the development and heritage assets, particularly the adjacent Oakdene Manor. They must also take account of, and be prepared in accordance with approved operational drainage arrangements, and the landscape and ecological management plan to be secured under requirement 12.
- 9.13.9 Importantly the design details will also be required to address the need for the onshore substation to be water neutral to accord with the guidance issued by Natural England in relation to development in parts of Horsham District.
- 9.13.10 Requirement 9 takes a similar approach as requirement 8 but for the connection to the National Grid substation at Bolney. However, there is no requirement for this part of the scheme to demonstrate water neutrality as there will be no impact on water over and above the existing usage at the existing National Grid substation of which the extension works will form a part.
- 9.13.11 As noted above, requirement 10 secures a *programme identifying the stages of works* to allow the onshore elements of the authorised project to be constructed in stages, for site preparation works and subsequent construction works. Following approval of this programme,

various of the requirements may be discharged in relation to the discrete stages as approved.

- 9.13.12 Requirement 11 prevents commencement of the offshore works until a decommissioning programme has been submitted to the Secretary of State pursuant to the Energy Act 2004.
- 9.13.13 Requirements 12 and 13 relate to landscaping: the Undertaker is required, before it commences any stage of the onshore works, to submit a written landscape and ecology management plan and associated works programme for the stage, which accords with the outline landscape and ecology management plan, for approval to the relevant planning authority following consultation with the statutory nature conservation body and Historic England where relevant. All landscaping works are required to be carried out in accordance with the approved documents and the relevant recommendations of appropriate British Standard. If any tree or shrub which is planted is, within the period of ten years following completion of planting for the relevant stage, removed by the Undertaker, dies, or becomes damaged or diseased then it must be replaced in the first available planting season with a specimen of the same species and size.
- 9.13.14 In particular the landscape and ecology management plans for the substations comprising Work No. 16 or 20 must include the adjacent land comprising Work No. 17 where ecological mitigation works are to be carried out, and the plans for these stages must also accord with the relevant parts of the design and access statement.
- 9.13.15 Requirement 14 secures a strategy for biodiversity net gain on a staged basis. The strategy must accord with the information in an appendix 22.15 to the Environmental Statement; chapter 22 of the Environmental Statement reports the assessment of the proposed development's likely significant effects on terrestrial ecology and nature conservation.
- 9.13.16 Requirements 15 and 16 deal with highway accesses and require the submission and approval of the highway authority for an access plan for each new operational, new temporary or altered access. Where the access is in the South Downs National Park that body must specifically be consulted on the submitted plan.

- 9.13.17 Details must include siting, design, layout, visibility splays, access management measures and a maintenance programme relevant to the relevant access, and secure that all temporary and permanent accesses are provided to Department for Transport Design Manual for Roads and Bridges design standards or as otherwise agreed with the highway authority; the design standards in this document may not be appropriate for all highways within the onshore Order limits.
- 9.13.18 Requirements 17 and 18 secure operational drainage management. The Undertaker is required to obtain the written approval of the lead local flood authority in respect of an operational drainage plan, which accordance with the outline operational drainage plan submitted as part of the application (application document number 7.1), prior to the construction of each of the Oakendene substation (Work No. 16) and the extension to the National Grid substation at Bolney (Work No, 20). The lead local flood authority will need to consult with the sewage and drainage authorities as well as the Environment Agency before providing approval.
- 9.13.19 Requirement 19 secures the submission and approval of a written scheme of archaeological investigation, which must accord with the outline written scheme of investigation submitted with the Application (Application Document Ref. 7.9), for each stage of the onshore works prior to their commencement. The requirement also secures that the investigations are carried out, in accordance with the written scheme, which must also securing a programme for psot investigation assessment, with provision made ofr analysis, publication and dissemination.
- 9.13.20 Requirement 20: *Public Rights of Way*, requires that prior to the commencement of any stage of the onshore works (which could comprise a site preparation stage) the Undertaker must secure the approval of the highway authority, following consultation with the relevant local planning authority, for a public rights of way management plan for the stage (excluding in relation to public rights of way within the National Trail in the South Downs National Park – see section 9.12.20 below). Each stage specific document must accord with the Outline Public Rights of Way Management Plan submitted with the Application (Application Document Ref. 7.8). The plan must be implemented as approved for the relevant stage.

- 9.13.21 Specific arrangements will be made for the National Trail in the South Downs National Park. No stage of the authorised project within the onshore Order limits which includes the National Trail is to commence until a public rights of way management plan has been submitted to and approved by the South Downs National Park. A Rights of Way and Access Land Communications Plan must also be provided to the highway authority and the South Downs National Park Authority) prior to commencement of any stage of the onshore works. The approved plan must then be implemented during the relevant stage of the Authorised Project.
- 9.13.22 Requirement 2221: *Open Access Land*, requires submission of and approval for an open access land management plan prior to the commencement of a stage of onshore works within which an area of open access land is located. The details are to be provided as part of the stage specific public rights of way management plan. It must be implemented as approved.
- 9.13.23 Requirement 2322: *Code of construction practice*, requires the Undertaker to submit to the relevant planning authority (following consultation with the Environment Agency, the statutory nature conservation body, the highway authority and lead local flood authority) a code of construction practice for approval, for each stage of any works landward of MLWS, before that stage commences.
- 9.13.24 The code of construction practice must accord with the terms of the outline code of construction practice submitted with the Application (Application Document Ref. 7.2). Thereafter the construction works must be undertaken in accordance with the approved code. The requirement specifies what the Code of Construction must include as a minimum, and includes a number of documents that are submitted in outline with the Application.
- 9.13.25 Requirement 23 secures submission of an construction method statement Onshore—Construction—Method Statement on a staged basis in respect of each stage of works landwards of Mean Low Water Springs. A statement may cover one or more stages of works. As such a construction method statement Construction—Method Statement is required for the intertidal works and the requirement secures that for this stage the relevant planning authority must consult the MMO in addition to Natural England (who must be consulted on all stages).

The onshore construction method statements must accord with the Outline Onshore Construction Method Statement submitted with the Application (Application Document Ref. 7.23)

- 9.13.26 The requirement specifies what the statements should include as a minimum, and requires that the relevant statement must secure that the cable circuits are installed through the intertidal and coastal area by horizontal directional drilling (**HDD**) and specify details for its location , depth, method and process, and restrict above ground working to pedestrian access only. Restricted access must also be secured to other sensitive locations.
- 9.13.27 The construction method statements must also secure other parameters for the Authorised Project, including the maximum compound areas at the landfall location and where HDD technologies are being deployed. The statement must also confirm the details for the cable construction corridor width within the onshore Order limits, and burial depth along the cable corridor; this will confirm where departures from the standard width are required either to expand to accommodate specific installation methodologies or narrow to reduce effects on sensitive receptors. The construction method statement for each stage must be implemented as approved.
- 9.13.28 Requirement 24: *Construction traffic management plan*, requires the Undertaker to submit to and secure approval for a construction traffic management plan from the highway authority (in consultation with the relevant planning authority) before commencement of each stage of the authorised project landwards of Mean Low Water Springs. Each plan must accord with the Outline Construction Traffic Management Plan submitted with the Application (Application Document Ref. 7.6). The requirement specifies what the plan must include, particularly in order to minimise effects on air quality management areas.
- 9.13.29 An onshore construction workforce travel plan is also required to be submitted for approval in accordance with the Outline Construction Traffic Management Plan (Application Document Ref. 7.7).
- 9.13.30 Once approved each of the construction traffic management plans and construction workforce travel plans must be implemented as approved.

- 9.13.31 Requirement 25: *Contamination risk* - prevents commencement of the onshore works in a stage which includes land identified through an initial desk study as potentially affected by contamination, unless a risk-based land contamination assessment has been undertaken, and submitted to and approved by the relevant local planning authority. If unacceptable risks are identified, then a remediation scheme will be required. If previously unidentified contamination is discovered during construction, then works must cease and a report made to the relevant planning authority with appropriate remediation and verification plans put in place. Assessments are to be carried out in accordance with the Environment Agency's Risk Management manual.
- 9.13.32 Requirement 26 secures the preparation of an assessment of coastal erosion and future beach profile estimation, together with mitigation or adaptive management measures for the land within the Order limits in the areas identified for Work Nos. 6 and 7. The assessment must be approved by the Environment Agency. Any approved mitigation or management works must then be implemented.
- 9.13.33 Requirements 27 and 28: *Operational phase maintenance*, requires an operations and management plan (OMP) for each of the Oakendene substation and the extension to the National Grid substation at Bolney respectively to be provided to the relevant planning authority. The requirement specifies the details that must be so notified to the authority.
- 9.13.34 Requirement 29 seeks to control noise during operational phase of the Authorised Development. A scheme is to be submitted to and approved by the relevant planning authority, identifying noise attenuation and mitigation measures to minimise noise from the onshore substation comprising Work No. 16, and to monitor those measures. The scheme must secure the outcomes specified in the design principles, as set out in the Design and Access Statement (Application Document Ref. 5.8). The extension to the National Grid substation at Bolney will be operated in accordance with the arrangements for the existing substation. No similar provision is required for the extension to the National Grid extension as a consequence

of the outcome of the noise modelling work undertaken as part of the environmental impact assessment.

- 9.13.35 Requirement 30: *Control of artificial light emissions during operational phase* prevents the onshore substation comprising Work No. 16 being commenced until an operational light emissions management plan has been submitted and approved for the operational phase of the project. Requirement 31 secures the same for the extension to the National Grid substation at Bolney comprising Work No. 20. Both schemes must be implemented as approved throughout the operational life of the Authorised Development.
- 9.13.36 Requirement 32 secures the submission and approval of an operation travel plan by the relevant planning authority (following consultation with West Sussex County Council as highway authority) prior to the operation of the Authorised Development. This must accord with the Outline Operational Travel Plan submitted with the Application (Application Document Ref. 7.5). The travel plan must be implemented throughout the operational life to the Authorised Development as approved.
- 9.13.37 Requirement 33 requires that a skills and employment strategy must be approved by West Sussex County Council following consultation with~~provided to~~ the relevant planning authorities for all stages of the onshore works prior to the commencement of ~~any stage~~the onshore works of the Authorised Development (excluding site preparation works). The strategy must accord with the Outline Skills and Employment Strategy submitted with the Application (Application Document Ref. 7.24), and be implemented ~~throughout the construction of the relevant stage~~in accordance with its terms.
- 9.13.38 Requirement 34 secures submission of a Construction Communication Plan to the relevant planning authorities for approval prior to the commencement of the authorised development. This will detail the communication methods to be used to inform local communities of details of the project's construction and must be in accordance with the outline construction communications plan (to be submitted at Deadline 5).
- 9.13.39 Requirement 35 secures that notification is given to the relevant planning authority of the permanent cessation of commercial operation of the Authorised Development

within 28 days thereof. The undertaker then has six months in which to submit and secure approval for an onshore decommissioning plan, which must then be implemented as approved.

9.13.40 Requirement 36: *Requirement for written approval* confirms that where the approval of a party is required under a requirement that it must be in writing.

9.13.41 Requirement 37: *Amendments to approved details* allows details which have been submitted and approved by the relevant planning authority, highway authority or another approving person to be amended/varied in writing by the relevant discharging authority. This allows for the adaptation of the approved details and the measures they secure to reflect changes in circumstances, The amendment or variation must always be in accordance with the principles of and assessment undertaken in the environmental statement and must not give rise to any new or materially different environmental effects from those assessed in the original environmental statement.

9.13.42 Requirement 38: requires that appropriate mitigation against any adverse effects on the primary surveillance radar at Pease Pottage and NATS' associated air traffic (surveillance and control) services/operations is approved by the Secretary of State in consultation with NATS before the wind turbine generator blades can be installed. The arrangements must be implemented prior to the blades being installed and maintained throughout the lifetime of the Proposed Development unless it is agreed with NATS that the mitigation is no longer required.

9.13.43 Requirement 39: requires that works landward of mean low water springs must not commence until the undertaker has provided details of the number, specification (including lightning protection) and dimensions of each wind turbine generator and its location to the Brighton City Airport Limited and to the Secretary of State. Within 21 days of the information being provided (unless otherwise agreed), Brighton City Airport Limited must provide written confirmation to the undertaker as to whether an 'IFP Scheme' is required to mitigate the effects of the Proposed Development on the instrument flight procedures of Shoreham Airport.

9.13.44 In the event that an IFP Scheme is required: works landward of mean low water springs must not commence

until the Secretary of State has confirmed in writing that they are satisfied that the undertaker has put in place a binding undertaking to pay Brighton City Airport Limited for producing and securing the implementation of the IFP Scheme. No wind turbine generator or turbine blade that has been identified as having an impact on instrument flight procedures may be erected or fitted until such time as the Secretary of State receives confirmation from the Brighton City Airport Limited in writing that it has approved an IFP Scheme and the Civil Aviation Authority.

9.13.45 Requirement 40: *Vegetation Retention and Removal* requires that no stage of works landward of mean low water springs is to commence until a vegetation retention and removal plan for the stage has been submitted to and approved by the relevant planning authority, which must then be implemented as approved. The plan must accord with the outline vegetation and removal plan and mat cover one or more stages of the onshore works. The Vegetation Retention and Removal Plan is to be submitted at Deadline 5.

9.13.41

- 9.14 **Schedule 2** (*Streets subject to street works*) sets out the streets that would be subject to street works pursuant to Article 9. The streets are identified by reference to markings shown on specified sheets of the Access, Rights of Way and Streets Plan submitted with the Application (Application Document Ref. 2.5). The works are primarily required to allow the construction of accesses, but do also include streets where works are required to install the cable circuits across the road through open cut trenching.
- 9.15 **Schedule 3** (*Streets to be temporarily closed*) sets out the streets to be temporarily closed. It references the street and the extent of the street that may be closed by reference to marker points depicted on the Access, Rights of Way and Streets Plan submitted with the Application (Application Document Ref. 2.5).
- 9.16 **Schedule 4** (*Public rights of way*) Part 1 identifies public rights of way that are to be closed temporarily and the extent of that closure by reference to marker points shown on specified sheets on the Access, Rights of Way and Streets Plan submitted with the Application (Application Document Ref. 2.5), pursuant to Article 12.
- 9.17 Part 2 of the Schedule sets out the public rights of way to be temporarily closed and a substitute right of way provided during the period of closure in a specified location. The schedule identifies

the extent of the way affected by the closure by reference to points shown on specified sheets of Access, Rights of Way and Streets Plan. The proposed diversion is shown indicatively between the same points and is identified by a marker.

- 9.18 Part 3 sets out the public rights of way which may be required to be temporarily closed between the points shown on the Access, Rights of Way and Streets Plan submitted with the Application (Application Document Ref. 2.5), and a substitute right of way provided, but the location and alignment of the substitute route has not yet been identified. It is recognised that the three ways in question are important rights of way, being part of the South Downs Way National Trail and the National Cycle Network. In these locations the undertaker will seek to minimise interference with the public right of way following the detailed design process, and will secure the approval of the highway authority for a substitute route and provide the same prior to the temporary closure of the public right of way.
- 9.19 **Schedule 5** (*Access to works*) sets out those accesses that will be created in order for the undertaker to carry out the Authorised Project pursuant to Article 13. These accesses are identified in the schedule by reference to markers shown on specified sheets of the Access, Rights of Way and Streets Plan submitted with the Application (Application Document Ref. 2.5).
- 9.20 **Schedule 6** (*Temporary suspension of public access to Access Land*) sets out the areas of land to which the public have rights of access that may require to be temporarily suspended whilst the construction works for the Authorised Project are carried out pursuant to Article 22. These areas are identified by reference to shaded areas shown on the Open Access Land Plan submitted with the Application (Application Document Ref. 2.7).
- 9.21 **Schedule 7** (*Acquisition of new rights and imposition of restrictive covenants only*) specifies both the areas of land in which only new rights may be acquired or restrictive covenants imposed by the Undertaker and the nature of the rights and covenants that may be acquired and imposed.
- 9.22 **Schedule 8** (*Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants*) modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016.

- 9.23 **Schedule 9** (*Land of which temporary possession may be taken*) sets out the land of which only temporary possession may be taken, pursuant to Article 33.
- 9.24 **Schedule 10** (*Provisions relating to Statutory Undertakers*) provides protection for statutory undertakers whose assets may be affected by the Authorised Project. The schedule comprises general provisions for the protection of electricity undertakers, gas undertakers, water and sewerage undertakers and operators of the Electronic Communications Code Networks, and specific provisions for National Grid Electricity Transmission, Scottish and Southern Electricity, Southern Gas Networks, Network Rail and National Highways.
- 9.25 The Protective Provisions remain the subject of ongoing negotiation and consultation with the relevant stakeholders and as such subject to refinement and the current position at Deadline 2 is set out in the table below.

Protective provisions for the benefit of Status of discussion between the parties

National Grid Electricity Transmission (NGET)	The Applicant is engaged in ongoing discussions and negotiations with NGET in respect of suitable protective provisions and anticipates being in a position to include final and agreed protective provisions in the DCO shortly, and certainly within the timeframe of the Examination. The draft DCO will be updated to reflect the agreed position as soon as this is reached.
Scottish and Southern Electricity (SSE)	The Applicant is engaged in ongoing discussions and negotiations with SSE in respect of suitable protective provisions and anticipates being in a position to include final and agreed protective provisions in the DCO shortly, and certainly within the timeframe of the Examination. The draft DCO will be updated to reflect the agreed position as soon as this is reached.
Southern Gas Networks (SGN)	The Applicant is engaged in ongoing discussions and negotiations with SGN in respect of suitable protective provisions and anticipates being in a position to include final and agreed protective provisions in the dDCO shortly, and certainly within the timeframe of the Examination. The

dDCO will be updated to reflect the agreed position as soon as this is reached.

Network Rail
Infrastructure Limited

Discussions are ongoing between the parties to deal with the overarching framework agreement which will govern the protective provisions as well as the asset protection arrangements. The Applicant envisages that the version of the provisions in the dDCO will be updated once that framework agreement has been finalised during the course of the Examination

National Highways

The Applicant is engaged in ongoing discussions and negotiations with National Highways in respect of suitable protective provisions and anticipates being in a position to include final and agreed protective provisions in the DCO shortly, and certainly within the timeframe of the Examination. The Applicant envisages that the version of the provisions in the dDCO will be updated once that framework agreement has been finalised during the course of the Examination

- 9.26 **Schedules 11 and 12** (*Deemed Marine Licence*) sets out the marine licences referred to in Article 39 which would be deemed to be granted for works comprised in the Authorised Project with separate licences for the generation assets and transmission assets. These are further explained below.
- 9.27 **Schedule 13** (*Hedgerows*) sets out the hedgerows that may be removed pursuant to Article 42. Hedgerows which are important, within the meaning given in the Hedgerow Regulations 1997, are identified separately in part 2 of the schedule. All hedgerows that might be removed as a consequence of the Authorised Project are identified by hedgerow numbers which are also depicted on the Tree Preservation Order and Hedgerow Plan. The extent to which hedgerows will be removed is described in the Vegetation Retention Plan comprising part of the Outline Code of Construction Practice submitted with the Application (Application Document Ref. 7.2) with the aim being to minimise the loss as far as possible. Measures to reinstate hedgerows will be confirmed in the stage specific landscape and ecology plans approved pursuant to requirement 12.
- 9.28 **Schedule 14** (*Procedure for discharge of certain approvals*) sets out the procedure which is to apply to the discharge of approvals

pursuant to the articles and specified requirements of the Order. The procedure follows that advised in Planning Inspectorate Advice Note 15: Drafting Development Consent Orders⁵ and its appendix.

9.29 **Schedule 15** (*Arbitration*) provides a process pursuant to which arbitration shall be conducted. As explained in relation to Article 46 a process for arbitration is secured through the Order which is consistent with the approach followed in the Hornsea Three Order and is consistent with the recommendation in Planning Inspectorate Advice Note 15: Drafting development consent orders. The intention is to achieve a fair, impartial, and binding award on substantive differences between the parties (with the exception of costs) with a timely resolution.

9.30 **Schedule 16** (Documents to be certified) sets out all the documents required to be submitted for certification pursuant to Article 51.

10. **Marine Licences**

Schedule 11 includes the Deemed Marine Licence for generation assets. A standard structure has been developed by previous applications for development consent for offshore wind farms. The Applicant has adopted a similar approach for the Authorised Project.

Deemed marine licence – generation assets

10.1 Part 1 – Licenced activities

10.1.1 Paragraph 1 (Interpretation) – provides the definition and interpretation of key terms used in the licence. Many of the terms included in this paragraph are identical to the terms in Article 2 of the Order.

10.1.2 Paragraphs 2 to 4 (Details of licenced marine activities) - provides details of the licensable marine activities as they relate to the generation assets, both in terms of construction as well as operation. It replicates the description of the Authorised Development in Schedule 1 of the Order, and it also describes the volumes of substances that may be disposed of as part of construction of the Authorised Development. In the array area a total disposal volume is given which comprises disposals arising from construction of Work Nos. 1 to 3, and part of Work No. 4 in the Array Area, however whilst Works 1 and 2 will be permitted by the licence for the generation assets in Schedule 11, Work Nos. 3 and 4 will be permitted by the licence for transmission assets in Schedule 12.

⁵ Republished July 2018 (version 2)

Consequently it is necessary for the disposal budget to apply across both licences and the sum of each not exceed the overall total. A separate volume of material that may be disposed of in the export cable corridor is given solely in the transmission assets licence.

- 10.1.3 Paragraph 5 sets out the grid co-ordinates for the Authorised Development comprising Work No.1. and for Work No.2.
 - 10.1.4 Paragraph 6 confirms that the deemed marine licence remains in force until the Authorised Project has been decommissioned.
 - 10.1.5 Paragraph 7 confirms that the provisions of section 72(7) of the 2009 Act do not apply to any transfer of the deemed marine licence unless it is a transfer not falling within Article 6 of the Order. This is necessary to ensure that there is no conflict between the operation of Article 5 of the Order and Section 72(7) of the 2009 Act.
 - 10.1.6 Paragraph 8 confirms that where the authorised scheme or any licenced activity is to be undertaken in accordance with a plan, protocol or statement approved under the licence, the approved details will include any amendments approved by the MMO.
 - 10.1.7 Paragraph 9 confirms that any amendments made to any approved details made pursuant to paragraph 8 must be in accordance with the principles and assessments set out in the Environmental Statement submitted with the Application (Application Document Ref. 6).
- 10.2 Part 2 – Conditions
- 10.2.1 Conditions 1 and 2 (*Design parameters*) repeat the design parameters included in Schedule 1, Part 3 of this Order.
 - 10.2.2 Condition 3 (*Maintenance of the authorised scheme*) confirms that the Undertaker may maintain the authorised scheme except where the terms of the licence provides otherwise. All maintenance works must be carried out in accordance with the submitted operations and maintenance plan, and must have been assessed in the Environmental Statement.
 - 10.2.3 Condition 4 (*Extension of time periods*) confirms that any time period for either the MMO or the Undertaker may be extended with the agreement of the other party.

- 10.2.4 Condition 5 (*Notifications and inspection*) provides for a procedure of supplying copies of the licence to agents, contractors, restricting the use of contractors and vessels notified to the MMO and publicising commencement of the authorised scheme.
- 10.2.5 Condition 6 (*Aids to navigation*) and 7 (*Colour of Structures*) provides for various matters in respect of aids to navigation including the requirement to maintain navigation aids and a procedure to be followed where an aid to navigation fails. There is also a requirement to provide notice to mariners and notification of the progress of works to Trinity House, [the MMO, MCA and UKHO](#).
- 10.2.6 Condition 8 (*Aviation safety*) requires the Undertaker to notify the Defence Infrastructure Organisation Safeguarding regarding the construction and dimensions of the authorised scheme. An operational lighting scheme for all structures over 60 metres must be submitted to and approved by the Defence Infrastructure Organisation Safeguarding, and Civil Aviation Authority. Lighting must then exhibited as approved for aviation safety, but also at the lowest permissible lighting intensity level to seek to reduce landscape and seascape visual impacts.
- 10.2.7 Condition 9 (*Chemicals, drilling and debris*) sets standards that must be met by the Undertaker in respect of the chemicals and other substances that can be used, ensuring that all materials are suitable for the marine environment. Provision is made for reporting misplaced or lost rock material and dropped objects, and their location and recovery if so directed by the MMO. Any spillages are also to be reported to the MMO.
- 10.2.8 Condition 10 (*Force majeure*) provides for deposits during an emergency and the requirement for the Undertaker, at its own cost, to recover that deposit unless written approval is otherwise received.
- 10.2.9 Condition 11 (*Pre-construction plans and documentation*) provides a requirement for the Undertaker to obtain the approval, before the commencement of the authorised scheme, of a range of documentation. The documentation includes a design plan showing the layout of the offshore works and in particular the location of the substations which must be located more than 500 metres from the array periphery, being the outermost part of the infrastructure (WTGs) constructed within the array area.

In addition a construction programme, construction method statement, project environmental management plan, a monitoring plan, a vessel management plan, a fisheries liaison and co-existence plan, a diver communication plan, a scour protection and cable protection plan, a sensitive features mitigation plan, a piling marine mammal mitigation protocol, a UXO marine mammal mitigation protocol, a cable specification and installation plan, and an aid to navigation management plan, are required to be submitted. Numerous of these plans are to accord with documents submitted with the Application either as standalone documents or as part of an umbrella document: application document references outline project environment management plan including an outline marine pollution contingency plan - 7.11; in principle monitoring plan including the outline vessel traffic monitoring strategy - 7.18; outline fisheries and co-existence plan - 7.19; outline diver communication plan - 7.20; outline scour protection and cable protection plan - 7.12; in principle sensitive features mitigation plan - 7.17; draft piling marine mammal mitigation plan - 7.14; draft UXO marine mammal mitigation plan - 7.15.

10.2.10 Paragraph (2) includes a requirement to submit a written scheme of investigation in accordance with the outline marine written scheme of investigation submitted with the Application (Application Document Ref. 7.13), and the condition sets out what it must cover as a minimum. Paragraph (3) requires Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive activities must only take place in accordance with a specific written scheme of investigation (which must accord with the details set out in the outline marine written scheme of investigation) which has been submitted to and approved by the MMO.

10.2.11 Timings for submission of the pre-commencement documents and surveys and their approval is set out in condition 12. The majority of documents are to be submitted to allow the MMO a four month review period but specific provision is made for the project environmental management plan, the sensitive features mitigation plan and the monitoring plan to be provided with a six month period for review.

10.2.12 Condition 13 (*Safety zones*) prevents the authorised scheme from taking place until an application has been made for a safety zone pursuant to the provisions of the

Energy Act 2004 insofar as relevant for that part of the authorised scheme.

- 10.2.13 Condition 14 (*Offshore safety management*) requires that no part of the authorised scheme may commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations as appropriate to the authorised scheme contained within MGN654 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes.
- 10.2.14 Condition 15 (*Reporting of engaged agents, contractors, and vessels*) requires the Undertaker to provide the MMO details of agents and contractors engaged in the authorised scheme. Only vessels and contractors so notified may undertake the authorised scheme.
- 10.2.15 Condition 16, 17 and 18 provides for the submission of details for the carrying out of monitoring pre-, during and post- construction. The provisions confirm that all survey proposals must be in accordance with the in principle monitoring plan, and require that the objectives of each survey are adequately identified. Condition 19 specifies that monitoring reports must be submitted to the MMO within 4 months following the monitoring to which it relates.
- 10.2.16 Conditions 20 (*Updating of cable monitoring plan*) requires a specific update to the cable monitoring plan following post installation surveys and throughout the operational life of the authorised scheme.
- 10.2.17 Condition 21 (*piling*) provides that if piling is to be undertaken as part of the authorised scheme, then this must be done in accordance with the
- 10.2.17.1 Piling marine mammal mitigation plan; and
 - 10.2.17.2 The sensitive features mitigation plan,
- each approved pursuant to condition 11.
- 10.2.18 Condition 22 (*Reporting of cable protection*) requires the Undertaker to provide the MMO and the statutory nature conservation body with a report of the location and volume of all cable protection used for the authorised

scheme not more than four months following completion of construction.

10.2.19 Condition 23 (*Decommissioning*) secures a decommissioning mammal protection protocol ("MMP") prior to decommissioning activities being undertaken. The decommissioning MMP must be implemented as approved.

10.2.20 Condition 24 (*Completion of construction*) secures the submission of a close out report to the MMO, MCA, UK Hydrographic Office and the statutory nature conservation body within three months of the date of completion of construction. No further construction activities may be undertaken under the licence following completion of construction.

10.2.21 Condition 25 (*Reporting of impact pile driving*) requires the submission of information to the Marine Noise Registry where driven or part-driven pile foundations are proposed to be used as part of the foundation installation of the authorised scheme. This includes details of:

10.2.21.1 the expected location and start/end dates of impact pile driving prior to the commencement of each part of construction of the authorised scheme; and

10.2.21.2 the locations and dates of impact pile driving within 12 weeks of completion of impact pile driving for the relevant part of the authorised scheme.

10.3 Schedule 12 includes the deemed marine licence for transmission assets. It largely duplicates the provisions of the deemed marine licence for the generation assets in Schedule 11 of the Order but tailored to reflect the transmission assets including specifying the grid co-ordinates where Work Nos. 3 – 6 may each be carried out.

Eversheds Sutherland (International)
LLP

One Wood Street
London EC2V 7WS
United Kingdom
Solicitors and Parliamentary Agents

APPENDIX 1

Letter dated 7 August 2023 from Rampion Offshore Wind Limited



To:

The Rt Hon Grant Shapps, MP
Secretary of State, Department for Energy Security and Net Zero
1 Victoria Street
London
SW1H 0ET

7th August 2023

Dear Secretary of State,

Application for development consent for Rampion 2 Offshore Wind Farm

As you are aware, Rampion Offshore Wind Limited ("ROWL") owns and operates the Rampion Offshore Wind Farm ("Rampion 1"). Rampion 1 was granted consent pursuant to the Rampion Offshore Wind Farm Order 2014 ("Rampion 1 Order"), which was made on 16 July 2014.

The development authorised pursuant to the Rampion 1 Order comprised up to 175 turbines with a generating capacity of up to 700 megawatts. However, the project was not built out to its full capacity. Rampion 1 as built comprises, inter alia:

- 116 wind turbine generators (as compared to up to 175 consented), and
- a single offshore substation (with up to two having been consented)

Rampion 1 became operational in 2018.

ROWL confirms its consent to the inclusion of a provision in the development consent order for Rampion 2 which has the effect of modifying the Rampion 1 Order from the date of the grant of development consent for Rampion 2 to secure that no more than 116 wind turbine generators and one offshore substation may be constructed pursuant to the Rampion 1 Order, unless the Rampion 2 Project has not been commenced by the date 7 years from the date of the order granting it development consent. This is the point at which the right to commence the authorised development will expire in accordance with the proposed requirements.

ROWL has agreed the terms of the proposed provision for the Rampion 2 development consent order with the applicant for the Rampion 2 project and would request to be consulted should any amendment to the provision be proposed by the Examining Authority or Secretary of State during the consenting process for the Rampion 2 project.

Yours faithfully


Director Andrew Robbins

Rampion Offshore Wind Limited