

Rampion 2 Wind Farm

**Category 8: Examination** 

**Documents** 

Applicant's Response to Action Points Arising from Issue Specific Hearing 2 and Compulsory

**Acquisition Hearing 1** 

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Procedure) Rules 2010, Rule 8(1)(c)(i)

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### **Document revisions**

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### **Executive Summary**

The second round of Issue Specific Hearings and a Compulsory Acquisition Hearing were undertaken in May 2024. This document is prepared by the Applicant in response to Action Points arising from Issue Specific Hearing 2 (ISH2) **[EV5-018]** and Compulsory Acquisition Hearing 1 (CAH1) **[EV6-012]** in May 2024 for Examination Deadline 4.



### 1. Introduction

### 1.1 Project Overview

- Rampion Extension Development Limited (hereafter referred to as 'RED') (the 'Applicant') is developing the Rampion 2 Offshore Wind Farm Project ('Rampion 2') located adjacent to the existing Rampion Offshore Wind Farm Project ('Rampion 1') in the English Channel.
- Rampion 2 will be located between 13km and 26km from the Sussex Coast in the English Channel and the offshore array area will occupy an area of approximately 160km². A detailed description of the Proposed Development is set out in **Chapter 4: The Proposed Development**, **Volume 2** of the Environmental Statement (ES) [APP-045], submitted with the Development Consent Order (DCO) Application.

### 1.2 Purpose of this document

This document is prepared by the Applicant to provide responses to the Examining Authority's Action Points [EV5-018] arising from Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 [EV6-012] in May 2024 where responses were required for Deadline 4.



### **Issue Specific Hearing 2**

Table	able 2-1 Applicant's responses to Action Points arising from Issue Specific Hearing 2					
PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response				
Agen	da Item 1 – Introduction					
1	Applicant to provide an updated DCO at D4 as per the Examination Timetable so that the order is restored. IPs to withhold commentary on the draft DCO until after D4 as per the Examination Timetable.	The Applicant has submitted an updated <b>Draft Development Consent Order [REP3-003]</b> at Deadline 4.				
Agen	da Item 2 – Onshore ecology					
2	Applicant to update Vol 2 Chapter 22 of the ES, Terrestrial Ecology and Nature Conservation [APP-063] at D4	The Applicant has submitted an updated Chapter 22: Terrestrial ecology and nature conservation, Volume 2 of the Environmental Statement [APP-063] at Deadline 4.				
3	Applicant to consider providing an Outline Biodiversity Management Plan/Strategy and respond at D4.	The Applicant considers that, in line with a number of stage specific plans that are to be provided under Requirement 22 (5) of the <b>Draft Development Consent Order [REP3-003]</b> (updated at Deadline 4), that the outline information with which a stage specific plan must accord is already detailed within the DCO Application documents.				

The principles of protecting and managing biodiversity are set out in the Outline Code of Construction Practice [REP3-025] (updated at Deadline 4) and the Outline Landscape and Ecology Management Plan [REP3-037] (updated at Deadline 4). The details of how this will be implemented in association with each construction stage will be set out for the relevant ecological features (see **Table 1** below for all) in the Applicant's proposed Biodiversity Management Plan.

The Biodiversity Management Plan will be a construction stage specific document that is focused on:

- Compliance with relevant wildlife legislation;
- Implementation of commitments (Commitments Register [REP3-049] (updated at Deadline 4) with regards biodiversity;
- The required pre-commencement ecological surveys; and
- The role of the Ecological Clerk of Works.

This information is provided with reference to individual ecological features (e.g. hedgerows, protected species etc.) within the Outline Code of Construction Practice [REP3-025] (updated at Deadline 4) and the Outline Landscape and Ecology Management Plan [REP3-037] (updated at Deadline 4). **Table 1** provides the relevant references in these documents to information that would inform the development of a stage specific Biodiversity Management Plan prior to commencement of that stage of works.



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response			
		Table 1 – References to where ecological features are addressed			
		Topic	Paragraph / Figure References		
		Outline Code of Construction Practice [REP3-025] (updated at Deadlin	ne 4)		
		Description of Biodiversity Management Plan	Paragraph 5.6.4 to 5.6.7		
		Climping Beach SSSI	Paragraphs 5.6.8 to 5.6.15		
		Ancient woodland	Paragraphs 5.6.16 to 5.6.21		
		Veteran trees	Paragraph 5.6.22		
		Local Wildlife Sites	Paragraphs 5.6.23 to 5.6.26		
		Vegetation retention plans	Paragraphs 5.6.27 to 5.6.30		
		Woodland	Paragraphs 5.6.31 to 5.6.32		
		Coastal and floodplain grazing marsh	Paragraphs 5.6.31 to 5.6.34		
		Hedgerows / tree lines	Paragraphs 5.6.35 to 5.6.45		
		Watercourses and wet ditches	Paragraphs 5.6.46 to 5.6.48		
		Badgers	Paragraphs 5.6.51 to 5.6.54		
		Otter	Paragraphs 5.6.55 to 5.6.57		
		Water vole	Paragraphs 5.6.58 to 5.6.60		
		Bats	Paragraphs 5.6.61 to 5.6.65		
		Hazel dormouse	Paragraphs 5.6.66 to 5.6.68		
		Great crested newt	Paragraphs 5.6.69 to 5.6.72		
		Reptiles and amphibians	Paragraphs 5.6.73 to 5.6.75		
		Breeding birds	Paragraphs 5.6.76 to 5.6.78		
		Wintering birds	Paragraph 5.6.79		
		Fish	Paragraphs 5.6.80 to 5.6.81		
		Vegetation retention plans	Figures 7.2.1 to 7.2.6		
		Outline Landscape and Ecology Management Plan [REP3-037] (update)	ted at Deadline 4)		



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response		
		Habitat creation	Paragraphs 3.1.1 to 3.1.16	
		Habitat reinstatement	Paragraphs 4.1.1 to 4.9.8	
		Indicative landscape plans	Oakendene onshore substation – indicative landscape plan / Oakendene substation – indicative planting phasing plan / National Grid Bolney substation extension works – indicative landscape plan – AIS and GIS option	
4	Applicant to consider updating Commitment C-5 of the Commitments Register (CR) [REP3-049] and respond at D4.		- ' '	
5	Applicant to consider updating CR Commitment C-112 and C- 217 in response to Natural England's written representations and ongoing discussions and respond at D4.	Commitment C-112 has been updated to read "No ground-breaking activity or use of wheeled or tracked vehicles will take place south of the seaw (above mean high water springs) within Climping Beach Site of Special Scientific Interest (SSSI). Within the Littlehampton Golf Course and Atheria Beach Local Wildlife Site (LWS) vehicular access will be restricted to a low pressure rig for ground investigation purposes only during the site preparation works. Should remedial action be required in the unlikely event of a drilling fluid breakout access would be taken immediately to ensure drilling fluid can be contained and removed. Reinstatement and compensation measures would then be discussed and agreed with Natural England This approach will be detailed in the Pollution Incident Response Plan secured through Requirement 22(5)(k) that will be agreed with the relevant planning authority in consultation with the Environment Agency and the statutory nature conservation body."  This updated wording is to provide for access through the Littlehampton Golf Course and Atherington Beach Local Wildlife Site (LWS) for ground		
		investigation works (this is unavoidable as existing tracks – such as that used for the Environment Agency beach maintenance works run through the LWS) and to provide comfort to Natural England regarding any unforeseen remedial actions that may be required. Commitment C-112 is secured through Requirements 22 and 23 of the <b>Draft Development Consent Order [REP3-003]</b> (updated at Deadline 4).  Commitment C-217 has been updated to read "All site preparation and construction works within 150m of the boundary of Climping Beach Site of Special Scientific Interest and Littlehampton Golf Course and Atherington Beach Local Wildlife Site will be programmed to avoid the winter period between October and February inclusive, to avoid disturbance to wintering waterbirds during the coldest period."		
		This updated wording provides for the addition of Littlehampton Golf Course and Atherington Beach LWS as a precaution as it supports the sanderli that also frequent Climping Beach Site of Special Scientific Interest (SSSI). It also clarifies the description of what works can or cannot be undertake during the winter period and provides instead a stand-off for all construction activity. The stand-off area is based on a distance of 150m. This is on the basis of Scottish Natural heritage Research Report No. 1096: Seaweed hand-harvesting: literature review of disturbance distances and vulnerabilities of marine and coastal birds (Goodship and Furness, 2019). This report notes the following for Sanderling during the winter and migratory periods:		
		Flight initiation distance (minimum and maximum quoted) from pedestrians walking or running as between 6 and 51m;		
		Flight initiation distance (minimum and maximum quoted) from pedestrian leisure activity and watercraft along the shoreline as between 40 to 70m; and		
		Minimum Approach Distance for vehicles and pedestrians between 30m	and 86m.	
		It is also notable that Bird Wise East Kent (a partnership of local authorities birds that winter on the Special Protection Area of the Thanet Coast and Sa	s and conservation organisations, working together to mitigate disturbance to andwich Bay) gives a flight initiation of 32m (Bird Wise, 2024).	



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response
		The 150m buffer placed around the SSSI and LWS has been set to ensure that there is sufficient confidence in this measure by being much greater than the maximum quoted upper range of disturbance. This buffer has also been extended around the LWS as sanderling are known to use Climping Beach outside of the SSSI boundary. This provides additional confidence in the measure by extending its geographic extent. Commitment C-217 is secured in the Outline Code of Construction Practice [REP3-025] (updated at Deadline 4) which is secured through Requirement 22 of the Draft Development Consent Order [REP3-003] (updated at Deadline 4).
6	Applicant to consider issues raised by West Sussex County Council (supported by Horsham District Council) regarding monitoring arrangements for reinstatement, timely remedial actions and handover procedures to an Offshore Transmission Owner and issues raised by South Downs National Park Authority (SDNPA) regarding the lack of detail in the Outline Landscape Ecology Management Plan and respond by D4.	The Applicant has submitted an updated <b>Outline Landscape and Ecology Management Plan [REP3-037]</b> (updated at Deadline 4) including an update to Section 5 with regards to this action point.
7	Applicant to submit a document specifically addressing SDNPA ecological concerns explaining the likely effects of the Proposed Development on the ecological features of South Downs National Park (SDNP) in the context of its elevated status and how the purposes of the SDNP, particularly in relation to its ecological function, could be furthered by the Proposed Development by D4.  The Applicant may wish to provide an update to REP1-024 to provide a comprehensive, cross-cutting document addressing all relevant matters affecting the SDNP.	The Applicant has provided an update to the Deadline 1 Submission – 8.25.5 Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 5 – Further information for Action Point 27 – South Downs National Park [REP1-024] at Deadline 4. The information for Action Point 7 is provided Section 1.4 under the heading for Special Quality 2: A rich variety of wildlife and habitats including rare and internationally important species.
	Agenda Item 3 Offshore Ecology	
8	Applicant to revise maximum parameters and assessment assumptions in Table 11-13 in Chapter 11: Marine Mammals, Volume 2 resubmitted at D1 [REP1-004], to be clearer regarding number of monopile	The Applicant has submitted an update to Table 11-13 in <b>Chapter 11: Marine mammals, Volume 2</b> of the Environmental Statement (ES) <b>[REP1-004]</b> at Deadline 4 to provide clarity on the worst-case number of monopiles and pin piles. The Applicant confirms the worst-case for the marine mammal assessment for monopiles is simultaneous installation at West and East locations with sequential piling, so 2 monopiles in West location and 2 monopiles in East location (resulting in a total of 4 monopiles). The Applicant confirms the worst-case for the marine mammal assessment for multileg foundations with pin piles is simultaneous installation at West and East locations with sequential piling, so 4 pin piles in the West location and 4 pin piles in the West location (resulting in a total of 8 pin piles)

piles in the West location (resulting in a total of 8 pin piles).

resubmitted at D1 [REP1-004], to be clearer regarding number of monopile



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response
	and pin pile installations at different locations at any one time.	
9	Applicant to clarify the reasons for noise modelling locations particularly in relation to proximity to Marine Conservation Zones (MCZ).	The Applicant clarifies that the noise modelling locations used in Appendix 11.3: Underwater noise assessment technical report, Volume 4 of the Environmental Statement [APP-149] shown on Figure 3-2 at the co-ordinates identified in Table 3-1 of that document have been chosen as the worst-case scenario for the following reasons:  Kingmere Marine Conservation Zone (MCZ) (black seabream feature): North West modelling location is situated along the closest boundary of the proposed DCO Order Limits to the Kingmere MCZ and is appropriately representative of the northern side of the array area in informing worst-case noise propagation extents for the black seabream feature of the MCZ. The Applicant notes that, whilst slight alteration of the modelled location along the inshore boundary of the proposed DCO Order Limits could marginally reduce the distance between the proposed DCO Order limits and the MCZ boundary, the northern modelling location is within the area defined as a piling exclusion zone during seabream-sensitive spawning/nesting season, as set out in commitment C-280 (Commitments Register [REP3-049] updated at Deadline 4) and as described in the In Principle Sensitive Features Mitigation Plan [REP3-045] (updated at Deadline 4 to include the revised predicted decibel reduction to be achieved by different noise abatement measures as set out in Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm (Document Reference 8.40)). Therefore, the Northern modelling location is effectively in excess of the worst-case scenario when considering impacts to the black seabream feature of the Kingmere MCZ. The Applicant confirms that, as a result, the modelled (northern) location, along with any other location located along the northern boundary of this section of the proposed DCO Order Limits in proximity to the Kingmere MCZ, represents an appropriate and robust maximum design scenario for the purposes of the environmental impact assessment
10	Applicant to consider how the maximum design scenario for piling is secured as a Requirement.	The Applicant has updated the <b>Draft Development Consent Order [REP3-003]</b> at Deadline 4 to confirm that the maximum hammer energy for piling will be required to be specified as part of the construction method statement to be submitted for approval pursuant to condition 11(1)(c) of Schedules 11 and 12. The construction method statement must be in accordance with the construction methods assessed in the environmental statement and therefore the hammer energies must not exceed that assessed. A construction programme must also be submitted for approval pursuant to condition 11(1)(b).
11	Applicant to submit proposals for monitoring and adapted management of underwater noise.	The Applicant has submitted an updated Offshore In Principle Monitoring Plan [REP3-047] at Deadline 4, which includes clear objectives in respect of collecting appropriate data to validate that the noise level predictions made in the Environmental Impact Assessment (EIA) are appropriate and that the impacts predicted, and any mitigation zones implemented as a result of them, are valid and provide the correct level of protection to marine fauna. The proposed noise monitoring will provide data to meet several specific aims, including:
		to show that the noise level predictions made are appropriate and that the impacts predicted are valid;
		to validate the mitigation measures in terms of effectiveness; and
		to validate mitigation zones implemented during piling; and



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response
		to validate compliance with the specified noise threshold proposed for black seabream at the Kingmere Marine Conservation Zone site, should one be implemented.
		The proposed monitoring includes the construction noise monitoring of four from the first twelve (12) piles to validate the assumptions made within the Environmental Statement (ES), and to monitor construction noise during the black seabream breeding season (1st March to 31 July) if foundation installation using percussive hammers is undertaken during these months.
12	Applicant to submit a document on site specific information on different noise abatement systems at different depths and effectiveness for the Proposed Development.	The Applicant has submitted Information to support efficacy of noise mitigation / abatement techniques with respect to site conditions at Rampion 2 Offshore Windfarm (Document Reference 8.40). This report has been produced by the Institute of Technical and Applied Physics who have considerable experience monitoring noise abatement measures in Germany.
13	Applicant to provide evidence and figures showing the behavioural noise threshold (mitigated and unmitigated) with the MCZs at Beachy Head and any others where seahorses are a feature.	The Applicant has updated the In Principle Sensitive Features Mitigation Plan [REP3-045] (updated at Deadline 4) to include figures showing the behavioural noise threshold and to explain the evidence that has informed the Applicant's position. The Applicant also directs the Examining Authority to the updated commitment C-265 (Commitments Register [REP3-049] updated at Deadline 4):
		<ul> <li>"Double big bubble curtains will be deployed as the minimum single offshore pilling noise mitigation technology to deliver underwater noise attenuation for all foundation installations throughout the construction of the Proposed Development where percussive hammers are used in order to reduce predicted impacts to:</li> <li>sensitive receptors at relevant Marine Conservation Zone (MCZ) sites and reduce the risk of significant residual effects on the designated features of these sites;</li> <li>spawning herring; and</li> <li>marine mammals."</li> </ul>
		The implementation of this mitigation will further reduce the impact ranges of underwater noise (including behavioural effect ranges) to sensitive features such as seahorse as features of Marine Conservation Zones within the vicinity of Rampion 2.
14	Applicant to consider Article 5 in comparison to the Sheringham and Dungeon Development Consent Order	The Applicant has amended the <b>Draft Development Consent Order [REP3-003]</b> at Deadline 4 to delete the words '(including the deemed marine licences)' at paragraphs 5(2)(a) and 5(2)(b).
	and address the Natural England and Marine Management Organisation (MMO) wording changes to Deemed Marine License including Schedule 11 and 12 and Condition 10.	The other principal difference between the wording of Article 5 in the <b>Draft Development Consent Order</b> [ <b>REP3-003</b> ] (updated at Deadline 4) and the Sheringham Shoals and Dudgeon Extensions Offshore Wind Farm Order is in relation to the ability to lease the benefit of the deemed marine licences in connection with a lease of the benefit of other provisions of the Order under Article 5(2). The wording included in the Order has precedent in numerous development consent orders for offshore wind farms as noted in the <b>Deadline 3 Submission – 8.54 Applicant's Response to Examining Authority's First Written Questions</b> [ <b>REP3-051</b> ]. The Applicant notes that the Marine Management Organisation agreed to provide an alternative form of wording to address the potential for the need to lease the benefit of the deemed marine licence at Deadline 4, and the Applicant will consider this on receipt.
		In relation to the wording changes to the deemed marine licence requested by the Marine Management Organisation's Deadline 3 response [REP3-076] please see the table below:



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response			
		Reference		Comment	Response
			MMO's comments on Applicant's first up	odate to Draft DCO	
		Main DCO – Part 2 Principle Powers	Article 5 (Benefits of the Order)	The MMO notes that none of our previous comments have been actioned. This article remains in place despite MMO's previous objection.  The MMO's position remains it should be made clear that this section does not apply to the MMO. (See also condition (7) of both DMLs, which should also be removed)Further representations on this point will be made by Counsel at the hearing.	As noted above the terms of Article 5 were discussed at Issue Specific Hearing 2 during which the Applicant confirmed its position that the ability to transfer the benefit should apply to the deemed marine licences (now amended as set out above).
		Schedule 11 – Deemed Marine Licence Part 1	2.(b) "(transmission);;"		The additional ";" has been deleted in the <b>Draft Development Consent Order [REP3-003]</b> updated at Deadline 4.
		Schedules 11 and 12 – Deemed Marine Licences Part 1	7. "The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 5 (benefit of the Order) of the Order."	This provision has not yet been removed, along with the other sections of article 5, above. Counsel to provide representations on this point.	This is related to the Marine Management Organisation's position in relation to Article 5. If Article 5 is to continue to allow the transfer of the benefit of the deemed marine licence it will continue to be necessary to disapply section 72 as specified.
			9. Any amendments to or variations from the approved plans, protocols or statements must be in accordance with the principles and assessments set out in the environmental statement and approval for an amendment or variation may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the MMO that the amendment or variation is unlikely to give rise to any material new or materially different environmental effects from those assessed in the environmental statement.	The MMO's previous comments have been only partially integrated. The MMO would like to see strengthening of the wording for clarity and to ensure MMO is able to regulate sufficiently robustly. MMO proposed changes in bold:  "Any amendments to or variations from the approved plans, protocols or statements must be in accordance with the principles and assessments set out in the environmental statement and approval for an amendment or variation may only be given in relation to immaterial changes where it has	The Applicant maintains that the wording of Condition 9 in the dMLs in the Draft Development Consent Order [REP3-003] (updated at Deadline 4) is consistent with that in previous orders in terms of being unlikely to give rise to new or different environmental effects (with minor changes in other terminology).



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response			
				been demonstrated to the satisfaction of the MMO that the amendment or variation is unlikely to will not give rise to any material new or materially different environmental effects from those assessed in the environmental statement."	
		Schedules 11 and 12 Deemed Marine Licence Part 2	Condition 3(2) "[] All operations and maintenance activities shall be carried out in accordance with the submitted operations and maintenance plan."	The operations should be in accordance with the plan as approved, not simply submitted. Amended with additional wording allowing for alternatives to be agreed in writing to allow for flexibility. MMO proposed changes in bold:  "All operations and maintenance activities should be carried out in accordance with the approved submitted operations and maintenance plan unless otherwise agreed in writing between the applicant and the MMO."	The Marine Management Organisation has not provided any justification as to why it requires to approve the operation and maintenance plan. The document has been submitted into the Examination and the subsequent document to be provided to the Marine Management Organisation will be required to accord with this outline document.  The wind farm is not located in a sensitive marine area and therefore its operation and maintenance in accordance with the plan, which reflects the assessment in the Environmental Statement, does not require monitoring for any specific purpose. Should any 'out of the ordinary' maintenance be required a new marine licence would be required to be sought.
			Condition 3(5) "Where the MMO's approval is required under paragraph (3), approval may be given only where it has been demonstrated to the satisfaction of the MMO that the works for which approval is sought are unlikely to give rise to any material new or materially different environmental effects from those assessed in the environmental statement."	This should accord with the same standard proposed in Part 1(9), above. MMO proposed changes in bold:  "Where the MMO's approval is required under paragraph (3), approval may be given only where it has been demonstrated to the satisfaction of the MMO that the works for which approval is sought are unlikely to will not give rise to any material new or materially different environmental effects from those	The Applicant maintains that the wording of this condition is consistent with that in previous orders in terms of being unlikely to give rise to new or different environmental effects (with minor changes in other terminology).



Applicant's response

Condition 4. Any time period given in this licence given to either the undertaker or the MMO may be extended with the written agreement of the other party.

Condition 8(3) "... structures above 60meters"

Condition 9(8) "All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable following the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out on the undertaker (such as side scan sonar) if reasonable to do and the MMO may require obstructions which are hazardous to other marine users to be removed from the seabed at the undertaker's expense if reasonable to do so."

assessed in the environmental statement."

The MMO would like clarification in terms of which time periods the applicant is considering would apply here (both in relation to the applicant and also the MMO).

Needs space, e.g. "... structures above 60 meters"

This passage has been weakened since the MMO's last requested change. The MMO requires a time frame for reporting. The Dropped Object Procedure Form isn't defined, so shouldn't be capitalised here. The MMO requires a broader discretion on the reasons for removing obstructions so should not be bound by the higher standard of demonstrating that the obstructions be hazardous to other marine users. (Note that any requirement must be reasonable in any event). Other minor changes recommended for clarity. MMO proposed changes in bold:

"Condition 9(8) All dropped objects must be reported to the MMO using the dropped object procedure form Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the dropped object procedure form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so. And the On receipt of such survey results the MMO may require specific obstructions which are

This is intended to apply to any time period specified given in the licence to allow both parties flexibility to agree extensions in writing.

A space has been included in the Draft Development Consent Order [REP3-003] as updated at Deadline 4.

Capitalisation has been removed as requested in the **Draft Development Consent Order**[REP3-003] as updated at Deadline 4.

The requirement to notify applies as soon as reasonably practicable regardless of a specified time period. The Applicant notes that the wording reflects that in the Hornsea Four Development Consent Order (DCO), whereas in the DCOs made for the East Anglia One North and Two projects require notification within five days.

The Applicant has updated the **Draft Development Consent Order** [REP3-003] at Deadline 4 to enable the Marine Management Organisation to require objects to be removed following receipt of survey results but it is not considered appropriate to change the wording for the circumstances for removal; this has been retained to refer to obstructions which are hazardous to other marine users. The wording proposed by the Marine Management Organisation may allow requirement for removal of any



Applicant's response

Condition 10(1) Force Majeure "If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life or if the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO. (2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO."

hazardous to other marine users to be removed from the seabed at the undertaker's expense if reasonable to do so."

The MMO previously asked for this clause to be taken out (on the basis that it duplicates s.86 of MCAA and causes confusion).

The applicant is asked why they require this provision to be retained since it would appear to duplicate s.86 MCAA.

Counsel will provide further responses and clarification on this point if required.

items regardless of whether it hazardous or not, which would be unduly onerous for the undertaker.

The Applicant maintains its position that this is standard wording in development consent orders for offshore wind farms: it is included in East Anglia One North and Two, Hornsea Four, and is also included in the Order for Sheringham Shoals and Dudgeon Extension projects, save that this does not include limb (2).

The inclusion of this provision was considered in the determination of the Hornsea Four Application and the Examining Authority's report notes that the Marine Management Organisation presented a similar argument in that Examination. It was recorded that the Applicant's (for Hornsea Four) position was its Condition 12 – Force Majeure would not duplicate the provisions of the Marine and Coastal Access Act 2009, rather it would be a reporting requirement which would oblige the Applicant to notify the Marine Management Organisation if unauthorised deposits were made in an emergency.

The Examining Authority report concluded that "The ExA is satisfied with the Applicant's explanation as to why this Condition is needed. Furthermore, it notes that the same condition was included in the recently made Orders for East Anglia ONE North and East Anglia TWO" and did not accept the proposed changes. The Secretary



**Applicant's response** 

Condition 11 (2)(b) a full review of high resolution geophysical survey date and arrangements to document the same with West Sussex County Council;

Condition 12 (3) The MMO must determine an application for approval made under condition 11 within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

The MMO notes the removal of condition 11 2 (b), relating to the terrestrial interests of West Sussex Council and acknowledge that this has instead been covered under Part 3 Section 19 of the DCO, Onshore Archaeology.

Condition should be removed in its entirely. The MMO has internal Key Performance Indicators (KIPs) which work towards a 13 week turn around. The MMO will never unduly delay but cannot be bound by arbitrary deadlines imposed by the applicant since this would potentially prejudice other licence applications by offering expediency to the applicant at the expense of other applications. It is also unclear what consequences would result if this deadline was not met, and how that would impact on the MMO's regulatory function.

of State made no changes either in making the Hornsea Four Order.

The Applicant has no further comments on this point.

The Applicant has taken account of the representations made at earlier stages of the Examination by the Marine Management Organisation requesting that a six-month period be included for the approval of documents submitted for approval, and subsequent responses making requests for specific documents to be afforded a six-month approval period. The Applicant has conceded that a six-month approval period should be provided for the Sensitive Features Mitigation Plan, the Project Environment Mitigation Plan and the Monitoring Plan as set out in condition 11. Other plans are specified for approval within four months of their submission in accordance with Condition 12. This was reflected in the **Draft Development Consent Order** [REP3-003] submitted at Deadline 3.

The inclusion of specific periods for the Marine Management Organisation to approve documents submitted by an Undertaker accords with that adopted in numerous previous Orders for offshore wind farms, notably Sheringham Shoals and Dudgeon Extension Projects, where in condition 12 - Preconstruction plans and



**Applicant's response** 

Condition 16(2)(b) "(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, the preconstruction survey proposals must have due regard to the need to undertake— [...] (b) a survey to determine the location, extent and composition of chalk habitats, stony reef and potential Sabellaria spinulosa reef features, potential nesting sites for black seabream, and peat and clay exposures as set out within the outline in-principle monitoring plan."

The MMO considers this definition unnecessarily restrictive and requests the following s amendments in bold:

"(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, the preconstruction survey proposals must have due regard to the need to undertake— [...] (b) a survey to determine the location, extent and composition of chalk habitats, stony

documentation, six month periods are allowed for approval of specific documents whereas the majority are required to be approved within a four month period.

The imposition of determination periods is necessary to ensure that the project may progress on a known programme particularly given the status of low carbon energy projects as a critical national priority in the new National Policy Statement EN1 (Department for Energy Security & Net Zero, 2024).

On the basis that the Marine Management Organisation has a KPI to respond to, submissions within 13 weeks there should be no difficulty in committing to a response period of 4 months.

If the Marine Management
Organisation does not respond, the
undertaker will have the option of
applying for judicial review, or
requesting the Secretary of State to
direct that the Marine Management
Organisation determine the
application under the terms of the
Marine and Coastal Access Act
(MCAA) 2009.

The Applicant has already carried out some offshore surveys which have identified the possibility of the habitats identified in the draft condition being found in the Offshore Order limits. The surveys required by this condition are linked back to the content of the Offshore In Principle Monitoring Plan [REP3-047] (updated at Deadline 4) which reflects the findings of these surveys. The Offshore In Principle



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response			
				reef and potential Sabellaria spinulosa reef features, potential nesting sites for black seabream, and peat and clay exposures and any other species or features as set out within the outline in-principle monitoring plan."	Monitoring Plan [REP3-047] (updated at deadline 4) has been submitted to the Examination and will be a certified document.  Further, the monitoring plan to be approved pursuant to condition 11(1)(j) must accord with the Offshore In Principle Monitoring Plan [REP3-047] (updated at deadline 4). This sets out the principles for survey for Benthic subtidal and intertidal ecology in section 4.5; this captures that the focus has been on habitats/species of principal importance pursuant to section 41 of the Natural Environment and Rural Communities Act 2006.  As the submission proposals must be as set out in the Offshore In Principle Monitoring Plan [REP3-047] (updated at deadline 4) the change requested is redundant.
			Condition 16(3): "(3) The undertaker must carry out the surveys agreed under subparagraph (1) and provide the baseline report to the MMO in the agreed format and in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO and submitted to the MCA as Geographical Information System data referenced to WGS84 datum."	Unclear what the 'agreed timetable' referred to here is, applicant is asked to clarify.	The agreed timetable will be that set out in the Monitoring Plan submitted and approved in discharge of condition 11(1)(j) (for the Monitoring Plan) as per condition 16(1).
		Schedule 12 – Deemed Marine Licence Part 2	Condition 2(6) "Any cable protection authorised under the licence must be deployed within 10 years from the date of the Order unless otherwise agreed with the MMO."	The MMO note the change to 10 years from 15.	The Applicant has no further comments in relation to this point save to note that the same change has been made to Schedule 11.
			Condition 11(2)	The MMO notes the changes to the wording of this condition introduced in response to Historic England's Written	The Applicant has no further comments in relation to this point save to note that the same change has been made to Schedule 11.



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response				
				Representations. The MMO confirms these changes to be acceptable.		
		In response to points ra [REP3-003] please see		wording of this condition. The MMO common confirms these changes to be save acceptable. has b		The Applicant has no further comments in relation to this point save to note that the same change has been made to Schedule 11.
		Deemed Marine Licences Provision	MMO Comment		Applicant's respo	nse
		Condition 9	The MMO notes that the Applicant has not am in Condition 9(1) as requested by the MMO. To provide further comments on this after reviewing DCO	O. The MMO will in writing by the MMO all chemical iewing the next draft construction of the authorised sch		authorised scheme must be selected tified Chemicals approved for use by I gas industry under the Offshore tions 2002(a) (as amended).  ts the Marine Management
		Condition 9(8)	The MMO understands that Condition 9(8) has remove reference to '5 days' and has not been reference '24 hours', with the Applicant stating with Hornsea Four Offshore Wind Farm and E North and Two. The MMO will provide further of following its review of the next draft DCO.	n changed to that this is in line ast Anglia One		en addressed above in relation to the nt Organisation's Deadline 3



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response		
		Condition 17	The MMO is disappointed that amendments to Condition 17 on construction monitoring have not been adopted. The MMO disagrees with the proposed monitoring set out in the offshore inprincipal monitoring plan that monitoring should only be conducted for the first four piles. The MMO also disagrees with the Applicant's claim that no further monitoring other than that which is set out in the in-principal monitoring plan is considered necessary. The MMO would like to see the suggested conditions adopted in full.	The requirement for monitoring of four piles as provided in the In Principle Monitoring Plan [REP3-047] (updated at Deadline 4) is industry standard, and by way of example is the requirement in relation to the Sheringham & Dudgeon Order, with reports to be provided in accordance with the agreed period.  Should any change to monitoring arrangements be agreed this would be reflected in the terms of the In Principle Monitoring Plan [REP3-047] (updated at Deadline 4) and would not require a change to the Draft Development Consent Order [REP3-003] (updated at Deadline 4) itself. The Applicant has submitted an updated Offshore In Principle Monitoring Plan [REP3-047] at Deadline 4, which includes clear objectives in respect of collecting appropriate data to validate that the noise level predictions made in the Environmental Impact Assessment (EIA) are appropriate and that the impacts predicted, and any mitigation zones implemented as a result of them, are valid and provide the correct level of protection to marine fauna. Additional details are provided in the Applicant's response to Action Point 23 below.
		Condition 21	The MMO requests that Condition 21 is amended to include the following (below): "In the event that driven, or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive monopile foundations must not exceed 4,400kJ and the hammer energy used to drive or part-drive pin pile foundations must not exceed 2,500kJ."	The Applicant confirms that mitigation in respect of the impacts from piling is secured through the plans identified in condition 21. Further, the Applicant has amended condition 11(1)(c) in the <b>Draft Development Consent Order [REP3-003]</b> as submitted at Deadline 4 to require the construction method statement to specify the maximum hammer energy proposed. As the construction method statement, which is to be approved by the Marine Management Organisation, must accord with the construction methods assessed in the environmental statement the hammer energy cannot exceed the levels assessed.
		Condition 25	The MMO thanks the Applicant for adding Condition 25. Reporting of Impact Pile Driving, into Schedule 11 and 12. However, the MMO notes that the other requested Conditions ((26) Maintenance Reporting and (27) Stages of Construction) have not been added as conditions, and there is no stand-alone condition for seasonal restrictions (still included within Condition (11))	The Applicant notes that the Marine Management Organisation has not provided any justification for the maintenance reporting requirements. In addition, Condition 11(1)(b) secures submission and approval for a construction programme.



Applicant's response

Condition 25

The MMO welcomes the inclusion of an additional condition to the draft DCO to ensure compliance with UK requirements on noise recording. The MMO disagrees with the exclusion of section (b) of the condition. Despite the Applicant's claim that 'pile driving is unlikely to be carried out continuously throughout the construction period'. Any such breaks in piling activity do not preclude the Applicant from their requirement to comply with UK requirements on noise recording. The MMO would like to see condition wording included in full as written.

The details required to be submitted under condition 11(1)(k) for a sensitive features mitigation plan. This must accord with the In Principle Sensitive Features Mitigation Plan, [REP3-045] (updated at Deadline 4), which details the seasonal restrictions to be applied by the Applicant. It is not considered necessary for these controls to be duplicated on the face of the Order as the Marine Management Organisation will have power to approve, and then enforce compliance with this plan.

As noted, a new Condition 25 was included at the request of the Marine Management Organisation in respect of reporting of impact of pile driving, however it is not considered that (b) is necessary for inclusion.

The condition as requested provided that:
"Only when driven or part—driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry—

- (a) prior to the commencement of each stage of construction of the licensed activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements;
- (b) at six month intervals following the commencement of pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements; and
- (c) within 12 weeks of completion of impact pile driving, information on the locations and dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements."

The Applicant is committing to seasonal and temporal restrictions on piling in the In Principle Sensitive Features Mitigation Plan, [REP3-045] (updated at Deadline 4) rendering limb (b) of the condition unnecessary.

The Applicant notes that the condition is not included in the Sheringham & Dudgeon Order at all and (b) is not



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response		
				included in the East Anglia One North and Two Offshore Wind Farm Orders.
		Condition 3	The MMO acknowledges the commitment of the Applicant to reference the Outline Offshore Operations and Maintenance Plan (APP-238; OOMP) in the draft DCO. The MMO disagrees with the Applicant's consideration that the provision of an Operations and Maintenance plan makes conditions pertaining to the submission of regular maintenance reports "unnecessary". The provision of an Operations and Maintenance plan should not preclude the Applicant from the need to submit regular maintenance reports to the MMO for review. The MMO's position remains that this condition is necessary and should be to both Schedule 11 and 12.	The outline operations and maintenance plan is now referenced in Condition 3 of the deemed Marine Licences at Schedules 11 and 12 of the <b>Draft Development</b> Consent Order [REP3-003] (updated at Deadline 4). No proper justification has been provided by the Marine Management Organisation for regular reporting, particularly as the Proposed Development is not located in an area of specific environmental importance.
		In response to the outstanding points from Natural England in respect of the Deemed Marine Licences, the Applicant confirms:  A1) it is not considered necessary to amend the definition of commencement in the deemed marine licences as each are self-contained documents with their own defined terms, each including its own definition of commence.  A2) The Applicant has amended condition 11(1)(a) to reflect the wording relating to micrositing used in the Hornsea Four and Sheringham Shoals and Dudgeon Extension projects.  The Applicant has also provided an updated Alternative Schedule 17 (on a without prejudice basis) [PEPD-017] at Deadline 4.		
15	MMO to respond to Appendix H of the Applicant's Responses to Examining Authority's First Written Questions (ExQ1) - Appendix H - FS: Noise Thresholds for Black Seabream [REP3-051] for the black seabream spawning ground exclusion using the 135db contour with the 20db noise mitigation.	Not applicable.		
16	Applicant to consider and submit the without prejudice proposed Measure of Equivalent Environmental Measures (MEEB) for Kingmere MCZ.	• •	nitted a Without Prejudice Stage 2 Marine Conservation Zone (Moasures of Equivalent Environmental Benefit (MEEB) Review (Do	
17	Applicant to include minimum depth of HDD drilling of 5 metres within and secured by the DCO.	method statement for W	Requirement 23 of the <b>Draft Development Consent Order [REP3-0</b> fork Nos 6 and 7 includes details for the depth of the horizontal directivity following consultation with the statutory nature conservation body	ctional drilling (HDD). This will require to be approved by the



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response
18	The Applicant states that gravel bags would be laid using a micro-siting approach where practicable to avoid sensitive offshore features, as set out in C-283 in the Commitments Register. Applicant to re-consider the words 'where practicable' in C-283 relation to impacts upon the chalk features to provide more certainty.	The Applicant notes the Examining Authority refers to commitment C-283, however assumes that the point is raised in regard to commitment C-297. The Applicant has considered the possibility of updating commitment C-297 to address the point regarding the provision 'where practicable'. Whilst the intention will be to avoid sensitive features with the gravel bags (should these be used to facilitate the grounding of the cable vessel), given the nature of this inshore area, being largely comprised of chalk overlain by sediments, it is not likely to be possible to guarantee total avoidance of all chalk features during the landfall works. The Applicant would note that the pre-construction surveys will allow the identification of sensitive habitat features and inform the micrositing of the gravel bag placement and in this way avoid any significant effects arising. The Applicant highlights, however, that there are a range of factors that will influence the specific locations of the gravel bag beds during export cable installation, including the final design of the Horizontal Directional Drill (HDD), the specific locations of the HDD pits, the offshore cable trenching route and the potential use of cable ducts. As a result, the Applicant considers the wording 'where practicable' to be a necessary inclusion within commitment C-297.
19	Applicant to consider the submission of outline Cable Specification and Installation Plan document and an outline Cable Burial Risk Assessment.	The Applicant is considering submission of an outline Cable Specification and Installation Plan document and an outline Cable Burial Risk Assessment and will provide an update at Deadline 5.
20	Applicant to consider the submission of a document to compare the equipment and methodology for cable burial, including any lessons learnt from Rampion 1.	The Applicant is considering submission of a document to compare the equipment and methodology for cable burial, including any lessons learnt from Rampion 1 and will provide an update at Deadline 5.
21	Applicant to confirm the worst-case scenario of 4 monopile and 8 pin piles is what has been assessed in the Environmental Statement on the effects upon mammals and in Appendix 11.2 the Marine mammal quantitative underwater noise impact assessment [APP-148] and Appendix 11.3 the Underwater noise assessment technical report [APP-149].	The Applicant confirms that the worst-case scenario in 24 hours is 4 monopiles and 8 pin-piles and has been assessed in Chapter 11: Marine mammals, Volume 2 of the Environmental Statement (ES) [APP-052], Appendix 11.2: Marine mammal quantitative underwater noise impact assessment, Volume 4 of the ES [APP-148] and Appendix 11.3: Underwater noise assessment technical report, Volume 4 of the ES [APP-149]. The Applicant has provided an update to Table 11-13 in Chapter 11: Marine mammals, Volume 2 of the ES [APP-052] submitted at Deadline 4 clarifying the worst-case scenario of 4 monopile foundations and 2 multi-leg jacket foundations with pin piles (8 pin-piles).  Paragraphs 2.3.3 and 2.3.4 in Appendix 11.2: Marine mammal quantitative underwater noise impact assessment, Volume 4 of the ES [APP-148] states "It is assumed that two monopiles will be installed per 24 hours at each of the two locations, resulting in a total of four monopiles installed in 24 hours' and 'It is assumed that four pin-piles will be installed per 24 hours at each of the two locations, resulting in a total of eight pin-piles installed in 24 hours'.  Figure 4-3 and Table 4-31 in Appendix 11.3: Underwater noise assessment technical report, Volume 4 of the ES [APP-149] present the modelling results for simultaneous installation at West and East locations of 2 sequential monopiles at each location (totalling 4 monopiles). Figure 4-5 and Table 4-33 present the modelling results for simultaneous installation at West and East locations of 1 multi-leg jacket foundation with four pin-piles (totalling 8
		pin-piles).
22	Applicant to submit the population modelling that Natural England suggest for the bottlenose dolphin. (D5)	The Applicant will submit interim Population Consequences of Disturbance (iPCoD) modelling as suggested by Natural England at Deadline 5.
23	Applicant to present plan at D4 to Natural England and update on progress on discussions with Natural England for offshore in principle monitoring plan. (D5)	The Applicant has submitted an updated Offshore In Principle Monitoring Plan [REP3-047] at Deadline 4, which includes clear objectives in respect of collecting appropriate data to validate that the noise level predictions made in the Environmental Impact Assessment (EIA) are appropriate and that the impacts predicted, and any mitigation zones implemented as a result of them, are valid and provide the correct level of protection to marine fauna. The proposed noise monitoring will provide data to meet several specific aims, including:



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response		
		<ul> <li>to show that the noise level predictions made are appropriate and that the impacts predicted are valid;</li> <li>to validate the mitigation measures in terms of effectiveness; and</li> <li>to validate mitigation zones implemented during piling; and</li> <li>to validate compliance with the specified noise threshold proposed for black seabream at the Kingmere Marine Conservation Zone site, should one be implemented.</li> </ul> The proposed monitoring includes the construction noise monitoring of four from the first twelve (12) piles to validate the assumptions made within the		
		Environmental Statement (ES), and to monitor construction noise during the black seabream breeding season (1st March to 31 July) if foundation installation using percussive hammers is undertaken during these months. The Applicant will submit an update on discussions with Natural England at Deadline 5.		
24	Applicant to submit French translation of and a full response to all elements in the transboundary letter [REP3-104] from the French authorities. (D4)	The Applicant has submitted a translation of the French Secretary of State letter with responses in Applicant's Comments on Deadline 3 Submissions (Document Reference: 8.66) at Deadline 4.		
25	Applicant to consider updated Schedule 17 - Kittiwake Compensation Plan. (D4)	The Applicant has submitted an updated Alternative Schedule 17 (on a without prejudice basis) [PEPD-017] and Habitats Regulations Assessment (Without Prejudice) Derogation Case [APP-039] at Deadline 4.		
Agen	Agenda Items 4 and 5 – Day 1 other matters			
26	Applicant to consider a new Requirements in relation to primary radar mitigation and Instrument Flight Procedure (IFP) changes in relation to aviation safety.	Two new requirements have been included in the <b>Draft Development Consent Order [REP3-003]</b> submitted at Deadline 4 to secure mitigation for both radar and Instrument Flight Procedure.		
27	Applicant to submit updated Arboricultural Impact Assessment taking account of D3 submission REP3-054.	The Applicant has submitted an update to Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the Environmental Statement [APP-194] at Deadline 4. The updates take account of the Deadline 3 submission REP3-054 to align tree and hedgerow losses at construction accesses.		
28	Applicant to provide a response to route through existing gap in the treeline at Bolney.	The Applicant has committed to follow the mitigation hierarchy during detailed design which would include seeking to avoid impacts such as where it is feasible to make such as use of existing gaps in hedgerows and treelines. This commitment (C-292) is included in the Outline Code of Construction Practice [REP3-025] (updated at Deadline 4) and the provision of this final detail is secured through the delivery of the stage specific Code of Construction Practice to be provided pursuant to Requirement 22 of the Draft Development Consent Order [REP3-003] (updated at Deadline 4). Given the uncertain planning status of the two energy developments either side of this hedgerow, it would not be prudent to narrow the proposed DCO Order Limits at this time.		
29	Applicant to consider the significance given to the hedgerow / treeline known locally as the 'green lane' labelled as (W110) in the Outline Code of Construction Practice in Appendix B Vegetation Retention Plans and Pond	The Applicant notes that the feature W110 would not be removed in its entirety but is shown on Figure 7.2.1k in Appendix B of the Outline Code of Construction Practice [REP3-025] (updated at Deadline 4) as being subject to the loss of up to 14m (one 6m notch and four 2m notches). This follows the embedded environmental measures employed on the project of notching hedgerows and treelines. Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the Environmental Statement [APP-194] (updated at Deadline 4) shows this as two features (G29 and G35). G29 shows the understorey that as a grown out hedgerow and G35 are the hedgerows standard trees (all of which are Category A status). These trees are not veteran or ancient and are akin to others that are assumed to be lost in the realistic worst-case scenario.		



#### **Applicant's response**

Retention Plans Figure 7.2.6m [ REP3-025] and justification for its removal.

During detailed design loss of the standard trees would seek to be avoided or minimised as far as practicable by following the mitigation hierarchy (as per commitment C-292) by micrositing the cable trenches and haul road through existing gaps. This is subject to detailed design and will be confirmed in the stage specific Codes of Construction Practice to be provided pursuant to Requirement 22 of the **Draft Development Consent Order [REP3-003]** (updated at Deadline 4).

In response to this Action Point, the Applicant has also considered application of a trenchless crossing in this area. It is noted that this would not avoid all loss as a haul road of 6m would still be required for continued access along the cable corridor. An additional trenchless crossing would be expected to result in additional traffic movements for the set up and required plant during the works using Access A-61 from Kent Street and addition of noise during the 24-hour working required which would require further mitigation. In addition, there would be additional temporary land take for the trenchless crossing beyond that identified with the landowner to date.

While minor benefits would be apparent from an ecological and landscape and visual perspective, when considered alongside the additional construction costs of approximately £600,000 this is not considered proportionate given the significance of the features described above and that some loss would still occur even with the trenchless crossing. For these reasons, no change is proposed to the design and the embedded environmental mitigation measure of a reduced maximum 14m loss will be provided.

Applicant to provide additional information on prior extraction and materials management plan for mitigation in relation to minerals safeguarding.

The Applicant has submitted the following information on prior extraction and mitigation in relation to minerals safeguarding within Applicant's Response to Stakeholder's Replies to Examining Authority's Written Questions (Document Reference 8.77) at Deadline 4. The Outline Code of Construction Practice [REP3-025] has also been updated to reflect this information at Deadline 4.

The Applicant and West Sussex County Council held a meeting on 23 April 2024. At this meeting, West Sussex County Council acknowledged that a full Minerals Resource Assessment would be difficult to achieve at this stage of the project and therefore a proportionate response should be provided. It was agreed that more detail can be provided to confirm that safeguarded minerals will not be treated as waste material. West Sussex County Council requested confirmation to be provided on the Applicant's position that prior extraction is not feasible and clarity to be provided that minerals would not be considered in the same way as other excavated materials (which are covered by the current procedure within Section 4.12 of the Outline Code of Construction Practice [REP3-025] (updated at Deadline 4). If specific measures are required to manage minerals encountered along the cable route, WSCC requested that these be considered separately in the Materials Management Plan (MMP) which will form part of the stage specific Code of Construction Practice (CoCP) to be provided pursuant to Requirement 22 (4) (d) of the Draft Development Consent Order [REP3-003] (updated at Deadline 4).

Following the meeting the Applicant has considered the request and undertaken a further review of construction practices for the onshore cable route. The Applicant can confirm:

The Applicant will not treat any mineral encountered as waste. The construction process will follow common construction practice in re-using the subsoils or minerals excavated during the cable corridor construction works, within the construction and reinstatement of the temporary construction corridor, chiefly through the backfilling and reinstatement of the cable trenches. It is expected that all minerals excavated will be replaced in the same general location that they were excavated from.

The Applicant confirms that full scale prior extraction is not feasible for the following key reasons: For the sand and gravel minerals safeguarding area, in the meeting on 23 April 2024, West Sussex County Council acknowledged that the thin, linear nature of the onshore cable corridor would make prior extraction of the full thickness of the potential sand resource (possibly up to 40m thick) very difficult to achieve. This is due to the limited size of the working area available and the need to provide appropriate slope angles on the extraction faces to maintain land stability. This is particularly relevant where the cable route runs adjacent to the A283. In addition, if prior extraction to any depth was achievable this would leave an open pit as a void in the landform. The backfilling of this open pit, with the amount of fill required, the transport required to deliver this backfill material and the workings needed to both extract and fill this area are not considered to be sustainable. Detailed drainage and long-term water management considerations associated with the backfilled pit would need to be undertaken. Alternatively, not filling the void and leaving an open pit feature in-situ with the cable laid within



#### Applicant's response

would result insignificant landscape and visual impacts in the South Downs National Park. Leaving this mineral in-situ therefore provides a more sustainable approach with minimal disturbance. Complete extraction of potential minerals / aggregate materials underneath the easement corridor exclusively from within the Applicant's permanent easement corridor is technically and economically unfeasible.

For brick clay, British Geological Society (BGS) borehole information is not available along the route itself (except for a single record). Looking at BGS borehole records across the wider area, clay deposits vary in thickness and depth from the surface. Where thick clay deposits exist, full scale prior extraction is considered unlikely to be feasible due to the same reasons as sand (the depths of sand involved being 40m or more), width of corridor and voids needing to be filled). In other places, overburden could be so deep as to mean the clay is not touched by the construction works. Clay would also be replaced in the locations it is encountered, in the same manner as described for sand.

The management of minerals encountered along the route (whether in the Minerals Safeguarding Area (MSA) areas or elsewhere) during the construction works will be managed by the proposed MMP within the stage specific Code of Construction Practice as outlined in commitment C-69 (Commitments Register [REP3-049] (updated at Deadline 4) and included in the Outline Code of Construction Practice [REP3-025] (updated at Deadline 4) and secured via Requirement 22 (4) (d) within the Draft Development Consent Order [REP3-003] updated at Deadline 4).

Within the MMP, it is proposed that a separate section on minerals is provided (as per the addition of Section 4.13 in the Outline Code of Construction Practice [REP3-025] at Deadline 4) to differentiate these materials and the approach to their management from the other excavated materials. This minerals section would provide the following information:

- How minerals will be identified and differentiated from other sub-soil materials to be excavated, to determine if they do exist (quality and quantity) within the excavations undertaken.
- How any identified minerals will be extracted and stored to ensure that they are kept separate from, and not sterilised through contamination with, other materials;
- How the stored minerals will then be re-used in the cable construction and reinstatement works to minimise their mixing with other excavated materials being replaced; and
- Should there be any minerals available following the construction and reinstatement works, how other options for the re-use of any excavated minerals, either within, or outside the development, will be considered and implemented (as per West Sussex County Council Safeguarding Guidance and subject to agreement with the minerals rights owner).

In this way, all minerals encountered will either remain available for future extraction after the operational phase of the Project is complete, or be used a\s a resource, and are therefore safeguarded from permanent sterilisation.

The contents of the MMP will therefore be compliant with section 5.11.28 of EN-1, as it provides appropriate mitigation measures to safeguard all mineral resources (whether found in MSAs or elsewhere) (Department for Energy Security and Net Zero, 2024).

The contents of the MMP will also show accordance with Policy MP9(b) of the West Sussex Joint Minerals Local Plan (WSCC, 2018), in that it will confirm that the cable construction, as a non-minerals development within an MSA, will not permanently sterilise the minerals resource identified. The MMP will also confirm that the position identified within the **Planning Statement [APP-036]** also remains relevant: that the demonstrable, overriding and urgent need for the Project outweighs the temporary sterilisation of the minerals during the construction and operation and maintenance phases of the Proposed Development.

- Applicant to provide a response in relation to MMO concerns in respect of compliance with Marine Plan Policies.
- The Applicant has provided an updated Marine Plan and Policies Statement [REP2-027] which addresses the points raised by the Marine Management Organisation, at Deadline 4.

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#### **Applicant's response**

Clean versions of ES Chapters to be 32 submitted at the close of the Examination where amendments have been made. (D6)

The Applicant will submit the clean versions of Environmental Statement (ES) chapters that have been subject to amendments during the Examination at Deadline 6 as requested. The Applicant intends to submit the Commitments Register as a final version to be certified and appended to the ES to provide the record of those final versions of the commitments.

33 ExA requested a plan consolidating all tree and hedgerow information (retention and loss) from:

The Applicant has aligned the information on habitat loss that are expressed in the Tree Preservation Order and Hedgerow Plan [PEPD-007] (updated at Deadline 4), Appendix B Vegetation Retention Plan of the Outline Code of Construction Practice [REP3-025] (updated at Deadline 4), the Technical Note Construction Access Update Assessment Summary [REP3-055] and the Arboricultural Impact Plan within Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the Environmental Statement (ES) [APP-194] (updated at Deadline 4).

- TPO and Hedgerow Plan [PEPD-007]

Each of these documents provides information on vegetation loss and retention, in the following regards.

- Appendix B of the Code of Construction Practice [REP3-025]

- The vegetation loss statistics in the technical note on construction access [REP-055] be incorporated into a singular document entitled "Vegetation Retention and Removal Plan" which contains all information on tree and hedgerow locations, with a clear table of losses and mitigation/replacement

figures for each vegetation type. The ExA requested a new Requirement for the submission of vegetation removal plan which accords with its outline version. (D4 or D5)

The Tree Preservation Order and Hedgerow Plan [PEPD-007] (updated at Deadline 4) shows the same hedgerow features as the Vegetation Retention Plans in Appendix B of the Outline Code of Construction Practice [REP3-025]. The additional information provided is whether these are important or potentially important hedgerows under the Hedgerow Regulations 1997; this is linked to Article 44 of the **Draft Development Consent** Order [REP3-003] (updated at Deadline 4) which provides authority for the removal of the hedgerows specified in Schedule 13. Authority for the removal of hedgerows is required pursuant to the Hedgerow Regulations 1997, and Article 6 (Application and modification of legislative provisions) provides that the regulations are modified such that removal is permitted if necessary for carrying out development authorised by an Order under the Planning Act 2008. Schedule 13 provides a list of hedgerows which may be removed by reference to the Tree Preservation Order and Hedgerow Plan [PEPD-007]. This is a certified document in its own right for this purpose and reflects the requirements under the Hedgerows Regulations 1997 for a plan to be provided of hedgerows proposed for removal. The plan also shows trees or tree groups with Tree Preservation Orders (TPOs). TPOs are orders made by the local authority for amenity purposes. Although these are shown on Tree Preservation Order and Hedgerow Plan [PEPD-007], none are to be lost to the Proposed Development however they may be pruned or lopped subject to Article 45.

Figure 7.2.6 was included in the Outline Code of Construction Practice [REP3-025] (updated at Deadline 4) to collate where habitats of particular interest (hedgerows, tree lines, woodland, scrub, species-rich grasslands and ponds shown on Figure 7.2.1 to 7.2.5) will be affected by temporary or permanent loss. At this stage, the whole feature (e.g. a particular woodland) is highlighted but the key provides the extent in metres of the required clearance. This is because the exact location of loss is unknown until the detailed design is completed, this will also allow for micro-siting to target gaps in existing hedgerows. It is from this plan that the losses of each of these habitats is calculated as the information in the key provides the width of habitat take necessary to underpin this calculation. The figures in the Construction Access Update Summary [REP3-055] provided an update in relation to the access review specifically and these have been included in the update to the assessment of project wide losses in Chapter 22: Terrestrial ecology and nature conservation, Volume 2 of the ES [APP-063] (updated at Deadline 4).

The Arboricultural Impact Plan within Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the ES [APP-194] (updated at Deadline 4) seeks to illustrate the same information for hedgerows, tree lines, woodlands and scrub as the Vegetation Retention and Loss Plans in the Outline Code of Construction Practice [REP3-025] in accordance with British Standards for arboricultural surveys. The important differences are that Revision A of the Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the ES [APP-194] (submitted at DCO Application stage) has the same losses (e.g. the width of habitat loss remains the same), but consistently places these within the middle of the indicative cable corridor. This is done to provide a realistic worst-case scenario at the level of the individual tree. This results in different lengths of loss, as where individual trees are only minorly compromised they are considered as lost. The other difference is that Revision A of Appendix 22.16: Arboricultural Impact Assessment, Volume 4 of the ES [APP-194] describes habitats in a different way to the Phase 1 Habitat Survey that underpins the Outline Code of Construction Practice [REP3-025]. This is because different guidance is followed to produce the results (this is consistent across development projects). For example, the Phase 1 habitat survey will identify woodland and scrub, where the Arboricultural Impact Assessment will record either woodland or groups of trees. Further where the Phase 1 habitat survey will record scrub, this is entered as a tree group or woodland in the Arboricultural Impact Assessment, Volume 4 of the ES [APP-194] (updated at Deadline 4) identifies the locations of loss and show similar extents of loss, the habitat type attributed may be different and therefore the quantification



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will not exactly match. The maximum extent of loss is still controlled by that shown on Appendix B Vegetation Retention Plans of the Outline Code of **Construction Practice [REP3-025].** 

At Deadline 5, the Applicant will provide a Vegetation Retention and Removal Plan as requested by the Examining Authority, which will also highlight which hedgerows are important or potentially important and areas within which habitat losses are subject to temporary loss and reinstated or any areas of permanent loss. This document will also include tables showing the quantification of losses for each of the affected features shown. The Applicant has included a requirement in the updated Draft Development Consent Order [REP3-003] at Deadline 4 to indicate how this new plan would be secured and will review this new requirement further along with changes required to the existing Requirements 22 (5) (a) and (b) and the Outline Code of Construction Practice [REP3-025] at Deadline 5.

#### Agenda Item 6 - Seascape, Landscape and Visual

- 34 Applicant to reconsider Commitment C-66 of the CR, relevant Requirements 12, 16 and 22, and documents (such as the LEMP), including how the special qualities of the SDNP are clearly addressed.
- Applicant to supply document regarding design evolution and how the SDNP special qualities have been incorporated, including compensation, in relation to Levelling Up and Regeneration Act.

The Applicant has submitted an update to the Outline Landscape and Ecology Management Plan [REP3-037] and the Outline Code of Construction Practice [REP3-025] at Deadline 4 to address these Special Qualities within the outline plans for these requirements. These also include the embedded measures related to accesses (Requirement 16) in the Vegetation Retention Plan and reinstatement requirement as per the Outline Landscape and Ecology Management Plan [REP3-037]. As such the Applicant does not consider that further amendments are required to the Draft Development Consent Order [REP3-003] (updated at Deadline 4) Requirements to secure this commitment. The Applicant has provided further commentary in this regard in response to Action Point 35.

The Applicant has provided an update to the information provided in response to ISH1 Action Point 27 in Deadline 1 Submission – 8.25.5 Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 5 – Further information for Action Point 27 – South Downs National Park [REP1-024] which details how the project design evolution has considered each special quality (SQ) of the South Downs National Park (SDNP) including those covered in Action Point 7 (Ecology – SQ2), 36 (SLVIA and LVIA – SQ 1 and 3) and 61 (Cultural Heritage – SQ6). This information has been expanded for each SQ of the SDNP to include a summary of how the Applicant has sought to further purposes of the SDNP.

Further the Applicant notes the following with respect to the Levelling Up and Regeneration Act (LURA) 2023. s245 of the LURA 2023 amends s11A of the National Parks and Access to the Countryside Act 1949 ("the 1949 Act"). It provides, at s11A(1A):

"In exercising or performing any functions in relation to, or so as to affect, land in any National Park in England, a relevant authority other than a devolved Welsh authority must seek to further the purposes specified in section 5(1) and if it appears that there is a conflict between those purposes, must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.

This section imposes the duty on a 'relevant authority' as defined in s11A(3) and (4):

- (3) For the purposes of this section "relevant authority" means—
- (a) any Minister of the Crown,
- (b) any public body.
- (c) any statutory undertaker, or
- (d) any person holding public office.
- (4) In subsection (3) of this section—

"public body" includes—

- (a) any local authority, [corporate joint committee,] joint board or joint committee;
- (b) any National Park authority:

"public office" means—



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- (a) an office under Her Majesty;
- (b) an office created or continued in existence by a public general Act of Parliament; or
- (c) an office the remuneration in respect of which is paid out of money provided by Parliament."

The duty therefore applies to the Secretary of State in the carrying out of its functions in determining the application for the Proposed Development and will also apply to the functions of the highway and streets authorities as public bodies and discharging authorities when approving and enforcing compliance with control documents, and to the Marine Management Organisation when discharging conditions under the deemed marine licences.

The Applicant notes that there have been very few decisions on the application of the duty and associated guidance anticipated from Defra has yet to be published. It was considered briefly by the Secretary of State in granting the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 and in more detail in the A66 Northern Trans-Pennine Development Consent Order 2024 (see paras 302-307 of the SoS Decision Letter).

In terms of compliance with the duty, the Applicant submits:

that the duty is to seek to further the statutory purposes of the National Park. It is not a duty to avoid all harm.

that seeking to further the statutory purposes indicates that a positive effort to do so should be made, not that the furtherance of the statutory purposes is required to be the outcome.

that the duty does not require an alternative that best furthers the statutory purposes of the National Park be adopted.

that the duty must be considered in the context of the need for the development proposed. In that regard, the Applicant highlights that:

- the project falls within the definition of low carbon infrastructure (National Polic Statement (NPS) EN-1 (Department for Energy Security and Net Zero (DESNZ), 2024) section 4.2) for which there is a critical national priority, the need for which is articulated throughout the national policy statement.
- that the need for such infrastructure requires each location to maximise its capacity, and that delivering a project in a way which results in a significantly lower generation capacity is unlikely to meet the objectives (NPS EN-1 2024, paragraph 4.2.21).
- that when considering alternatives, only alternatives that meet the objectives of the proposed development need be considered (NPS EN-1 2024, paragraph 4.3.22 (DESNZ, 2024)).
- that reducing the scale, or otherwise amending the design, of projects may result in a significant operational constraint and reduction in function such as reduction in electricity output (NPS EN1 2011, paragraph 5.9.21 (Department of Energy and Climate Change (DECC), EN-1 2024, paragraph 5.10.26 (DESNZ, 2024)).
- that in applying the duty the Examining Authority and the Secretary of State should note the provisions of NPS EN-1 2024 (DESNZ, 2024), paragraphs 5.10.7 and 5.10.8:

"5.10.7 National Parks, the Broads and AONBs have been confirmed by the government as having the highest status of protection in relation to landscape and natural beauty. Each of these designated areas has specific statutory purposes. Projects should be designed sensitively given the various siting, operational, and other relevant constraints. For development proposals located within designated landscapes the Secretary of State should be satisfied that measures which seek to further purposes of the designation are sufficient, appropriate and proportionate to the type and scale of the development.

5.10.8 The duty to seek to further the purposes of nationally designated landscapes also applies when considering applications for projects outside the boundaries of these areas which may have impacts within them. In these locations, projects should be designed sensitively given the various siting,



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operational, and other relevant constraints. The Secretary of State should be satisfied that measures which seek to further the purposes of the designation are sufficient, appropriate and proportionate to the type and scale of the development."

Against that background the Applicant considers that the Proposed Development seeks to further the purposes of the National Park. This is summarised below with further detail provided in the update to Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 5 – Further information for Action Point 27 – South Downs National Park [REP1-024] at Deadline 4. This includes:

- development and provision of the Compensation Fund in the **Draft s.106 Agreement with South Downs National Park Authority** (**Document reference: 8.73**) (submitted at Deadline 4) to include funds for landscape and nature recovery to contribute to the landscape, scenic beauty and wildlife within the SDNP and which also provides opportunity for enhanced understanding and opportunity for enjoyment by the public including projects or location specific interpretation, projects relating to experiencing the tranquillity of the SDNP including enjoyment and understanding relating to dark skies as well as outreach to celebrate the landscape and wildlife.
- The Applicant committing to delivering Biodiversity Net Gain as part of the Proposed Development including the quantification of BNG within the context of the SDNPA area alone which was expressed within an updated version of Appendix 22.15: Biodiversity Net Gain Information, Volume 4 of the Environmental Statement (ES) [REP3-019]. See further information in paragraph 1.4.47 of the update to Applicant's Post Hearing Submission Issue Specific Hearing 1 Appendix 5 Further information for Action Point 27 South Downs National Park [REP1-024]. The Applicant is also seeking to provide localised biodiversity enhancements during reinstatement in accordance with paragraph 4.1.2 of the Outline Landscape and Ecology Management Plan [REP3-038] (updated at Deadline 4). Alongside the s.106 contributions, this provides betterment of biodiversity over and above the residual effects of the Proposed Development that will be compensated for. This also provides for opportunity for engagement and involvement with landowners and farmers.
- Through provision in the Compensation Fund for projects to improve accessibility in relation to rights of way, the Applicant is seeking to provide for projects that would clearly enhance the ability for all to enjoy the landscapes, scenic beauty, wildlife and cultural heritage afforded via these rights of way whether through improved access, signage, interpretation or other means.
- projects and publications to contribute towards opportunities for improved understanding and enjoyment of cultural heritage within the South Downs National Park arising from the effects of the Proposed Development on areas of archaeological significance as per the Outline Written Scheme of Investigation [REP3-035] and Compensation Fund.
- Opportunity to engage communities in the aforementioned projects.

The response from SDNPA to Written Questions (ExQ1) DCO1.4 [REP3-071] requested an amendment to Article 6 of the dDCO to note the duty on the face of the Order. It stated 'The SDNPA considers that explicitly acknowledging this enhanced duty when taking on the powers normally held by statutory undertakers (e.g. Local Highway Authority) would address the concern.'

The SDNPA proposed additional wording to be included in article 6, as set out in Appendix B to its response at Deadline 3 [REP3-071] as follows:

(7) The provisions of Section 11of the National Parks and Access to the Countryside Act 1949 (as amended by Section 245(3) of the Levelling Up and Regeneration Act 2023) apply insofar as they relate to activities that would reasonably be carried out by Statutory Undertaker.

The Applicant does not consider that this is necessary. The Applicant is not seeking to disapply or modify the duty under the terms of the dDCO and so the duty will apply as noted above. As such an amendment to Article 6 of the dDCO is not justified.



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At ISH2, the SDNPA reconsidered its position and indicated that its concerns might be addressed by amendments to requirements which related to the submission of further details for development which might affect the National Park. Requirements 12, 16, and 22 were specifically referred to, with the SDNPA referring to Article 54(2)(a) of the A66 Northern Trans-Pennine Development Consent Order 2024 which states:

- (2) The undertaker in relation to the detailed design of the authorised development must have regard to the amended duty to further the purpose of conserving and enhancing the protected landscapes set out in—
- (a) section 11A of the National Parks and Access to the Countryside Act 1949

The Applicant does not consider that this amendment is necessary and potentially risks delaying the delivery of critical national priority (CNP) infrastructure. The DCO Application is submitted on a Rochdale Envelope basis, supported by an Environmental Statement (ES) which considers the worst-case scenario within that envelope. Mitigation and compensation is then proposed and secured through the various control plans to be submitted under the Draft Development Consent Order Requirements and deemed Marine Licence Conditions, and the proposed s106 Agreement. It is on that basis that the Secretary of State will undertake the s11A duty in deciding whether to grant consent. Assuming the Development Consent Order is made then it is to be assumed that the Secretary of State is satisfied that development undertaken in accordance with the terms of Development Consent Order, deemed Marine Licences and the s106 Agreement will have sought to further the statutory purposes of the National Park. Imposing a requirement that may be interpreted as meaning that additional measures may be required at a later date risks frustrating the delivery of those proposals and therefore the meeting of the need identified in the national policy statements.

Nevertheless, the Applicant is mindful that the relevant authorities will wish to ensure that the measures secured at the point of consent are delivered and therefore is content to include wording in each of the control documents secured through the Development Consent Order and deemed Marine Licences that require it to indicate how the detailed submissions under the various requirements/conditions seek to further the purposes of the National Park in so far as consistent with the relevant outline documents.

The Applicant confirms that this text has been added to the Outline Landscape and Ecology Management Plan [REP3-037] (updated at Deadline 4) and the Outline Code of Construction Practice [REP3-025] (updated at Deadline 4).

The Applicant recognises that Requirement 16 (Highway Accesses in the South Downs National Park) is not a requirement for which an outline control document has been produced per se, but considers the relevant mitigation measures relating to access are secured through other control documents including the Appendix B Vegetation Retention Plan in the Outline Code of Construction Practice [REP3-025] (Requirement 22 of the Draft Development Consent Order [REP3-003] updated at Deadline 4) and reinstatement covered in the Outline Landscape and Ecology Management Plan [REP3-037] (Requirement 12 of the Draft Development Consent Order [REP3-003] (updated at Deadline 4)). See also response to Action Point 34 in this regard.

As requested in AP7, Applicant to submit a document specifically addressing SDNPA seascape, landscape and visual concerns explaining the likely effects of the Proposed Development on those features of SDNP in the context of its elevated status and how the purposes of the SDNP, particularly in relation to its function, could be furthered by the Proposed Development by D4.

The Applicant has provided an update to the **Deadline 1 Submission – 8.25.5 Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 5 – Further information for Action Point 27 – South Downs National Park [REP1-024]** at Deadline 4. The information for Action Point 36 is provided Section 1.4 under the heading for Special Quality 1: Diverse, inspirational landscapes and breathtaking views and Special Quality 3: Tranquil and unspoilt places.

The Applicant may wish to provide an update to REP1-024 to provide a



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	comprehensive, cross-cutting document addressing all relevant matters affecting the SDNP.	
37	SDNPA to consider if seascape is reason to refuse the proposals.	Not applicable.
Agen	da Item 7 – Traffic and Access	
38	Applicant to clarify whether the proposed widening of the western kerb line of Kent Street at its junction with the A272 and 4 passing places are on highways land or private land and within the order limits.	The Applicant can confirm that the proposed passing places are located within the proposed DCO Order Limits and West Sussex County Council highway boundary. The widening of the Kent Street carriageway on approach to the A272 is also within the West Sussex County Council highway boundary. The extended radius and taper at the junction itself is subject of discussion with West Sussex County Council Highways (see Action Point 44); this may fall beyond the extent of public highway. All widening works however are contained within the proposed DCO Order Limits.
39	Applicant to provide a proposed contingency plan for the repair of the carriageway of Kent Street during construction activities in the case of a carriageway failure.	The completion of emergency repairs is covered by Article 10 of the <b>Draft Development Consent Order [REP3-003]</b> (updated at Deadline 4) through application of provisions made within the New Works and Street Works Act 1991. This means that the Applicant will have the powers to conduct emergency repair work if necessary, with notice given to West Sussex County Council as soon as reasonably practicable and in any event within two hours of the works starting. In addition, the <b>Outline Construction Traffic Management Plan [REP3-029]</b> (updated at Deadline 4) includes a requirement for highway condition surveys to be completed prior to commencement and at regular intervals during the construction programme, and for the highway to be reinstated to the same standard as prior to the constructions works and in agreement with West Sussex County Council. These highway condition surveys, secured by Requirement 24 of the <b>Draft Development Consent Order [REP3-003]</b> (updated at Deadline 4), means that the potential for carriageway is recorded at an early stage, thereby reducing the potential for failure and need for emergency repair works.
40	Applicant to confirm the construction details of the proposed passing places on Kent Street, whether they would be removed at the end of construction activities and if so, how the lane would be returned to its former nature and character.	The proposed passing places are located within the West Sussex County Council highway boundary and fall under Work No.13 (Temporary construction access) on the <b>Onshore Works Plans [PEPD-005]</b> which is defined with the <b>Draft Development Consent Order [REP3-003]</b> (updated at Deadline 4) as 'temporary construction access including creation of visibility splays and vegetation clearance'.  The construction details of these temporary passing places will be agreed with West Sussex County Council as part of stage specific Construction Traffic Management Plans as per Requirement 24 of the <b>Draft Development Consent Order [REP3-003]</b> (updated at Deadline 4). Reinstatement of the temporary passing places once the construction is complete will be completed in accordance with commitment C-103 and C-199 of the <b>Commitments Register [REP3-049]</b> (updated at Deadline 4).
41	Explain how vehicles not related to the Proposed Development turning into Kent Street would be managed in combination with HGVs already dispatched from the Oakendene West Compound to accesses A64 and A61 in the Lane. In addition, confirm the size of vehicles that could pass each other using the proposed passing places.	An update has been made to the Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies included within Appendix D of the Outline Construction Traffic Management Plan [REP3-029] updated at Deadline 4 to provide further information on how construction and general traffic will be managed on Kent Street.  Given baseline traffic flows on Kent Street are generally very low it is considered unlikely that a vehicle would turn into Kent Street in the time taken for a construction heavy goods vehicle (HGV) to reach Kent Street from the construction compound. When this does occur, the following process will be followed depending upon which construction access is being used and the number of other vehicles on Kent Street.  • If a southbound (SB) vehicle enters Kent Street when vehicles are already being held in the Northbound (NB) direction they will be directed into one of the proposed temporary passing bays until the construction HGV has passed and after NB vehicles have been released. Where construction HGVs are entering Access A-61 SB vehicles will be able to be held at Access A-64 and one of the proposed passing places. When



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response
		construction HGVs are entering A-64 SB vehicles will be held at one of the proposed passing places, facilitated by banksmen holding northbound traffic at an appropriate location on Kent Street.
		<ul> <li>If a southbound vehicle enters Kent Street when there are not vehicles being held in the northbound direction it will be allowed to continue its journey unimpeded.</li> </ul>
		<ul> <li>For exiting HGVs the following process will be followed:</li> <li>Exiting HGVs would be supported by banksmen which hold northbound traffic south of the construction access junction and southbound traffic on the northern section of Kent Street at a safe distance from the junction with the A272 making use of the widening of the Kent Street carriageway, proposed temporary passing places or construction access A-64 (when not in use).</li> </ul>
		<ul> <li>In all cases general traffic will be given priority and only held when construction traffic has reached the construction access and is ready to leave the site. A construction vehicle traveling north from A-61 at 20mph however would take approximately two minutes to reach the junction with the A272 so would be unlikely to conflict with any SB traffic.</li> </ul>
		The Applicant can also confirm that the proposed passing bays are of adequate width to allow two HGVs to pass each other, noting this should not occur with the controls set-out in the proposed traffic management strategy. The swept path analysis of this is shown on Drawing 62280651-WSP-XX-XX-DR-TP-0100-019 as part of Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies included within Appendix D of the Outline Construction Traffic Management Plan [REP3-029] updated at Deadline 4.
42	Applicant to confirm how the safe passage of pedestrians, cyclists and horse riders along Kent Street would be safely managed.	The Applicant can confirm that additional information has been provide within Section 8 of the Outline Construction Traffic Management Plan [REP3-029] updated at Deadline 4 on the general principles to be applied during the construction phase in relation to pedestrians, cyclists and equestrians. In addition, an update has been made to Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies included within Appendix D of the Outline Construction Traffic Management Plan [REP3-029] updated at Deadline 4 to provide specific controls for Kent Street.
		Specifically in relation to Kent Street this will require use of the following control measures for the full duration that construction traffic heavy goods vehicles (HGVs) are using access A-61 or A-64:  • Prior to HGV arrival along Kent Street, banksmen will inform pedestrians, cyclists and equestrians of these incoming vehicles as part of their control of general traffic. This will allow users to wait south of the construction access or move off the carriageway where it is safe to do so (using existing informal passing places).
		<ul> <li>Construction HGVs will not be released from the compound whilst equestrians are using Kent Street north of access A-61 or A-64. This will allow adequate time for the route to be cleared before HGVs travel southbound along Kent Street.</li> </ul>
		<ul> <li>Exiting HGVs will be held on-site if equestrians are passing either access on Kent Street and until the route is clear for exit. HGV drivers will be required turn engines off until equestrians are at least 20m past the construction access.</li> </ul>
		<ul> <li>In the unlikely event that construction traffic meets equestrians on Kent Street, drivers will be required to wait in passing bays with engines off until the equestrian user is at least 20m away. Construction traffic would also be required to give-way to pedestrians and cyclists but without the need to turn engines off.</li> </ul>
		<ul> <li>Highway verges on Kent Street will be managed for the duration of the construction period to ensure forward visibility between passing places and allow verges to be used by pedestrians, cyclists and equestrian users if necessary.</li> </ul>
		The same strategy will be adopted for HGVs exiting accesses A-61 and A-64.
43	The Applicant to complete and submit a design for access A63 (the proposed substation site).(D5)	A preliminary design for access A-63 (Oakendene substation) has been prepared by the Applicant with the Stage 1 Road Safety Audit process commenced prior to Deadline 4. The proposed design and associated Road Safety Audit will be submitted into the Examination at Deadline 5 as requested.



#### **Applicant's response**

The Applicant to confirm that once hedging and trees have been removed for the widening of Kent Street at its junction with the A272 and construction of the access A63 (the proposed substation site) there would be adequate screening in the short to medium term of the proposed substation.

The Applicant has had further discussions with West Sussex County Council with regards the widening of Kent Street at the junction with the A272 since the submission of the Traffic Management Strategy within the Outline Construction Traffic Management Plan [REP3-029] at Deadline 3. This has included West Sussex County Council requesting further extension of the kerb line. The Applicant will continue engagement with West Sussex County Council to define this extent, seeking to avoid this as far as possible, and then amend the associated vegetation loss across all related documentation prior to the close of Examination.

The Applicant notes however that screening of the onshore substation works at this location will continue through retention of adjacent trees and hedges on the A272 (up to where the site access is required) and along Kent Street, plus the inclusion of a close-boarded fence with advance planting during construction. At the end of construction, the advance planting will have matured and this will be reinforced through additional native woodland planting in the north-east of the site as shown in the **Design and Access Statement [REP3-013]** Design Principle LV9 and the Indicative Landscape Plan in Appendix D of that document. The widened area of Kent Street will also be reinstated.

The Applicant to provide a statement comparing the potential impacts of using Kent Street to access A64 and A61 with using haul roads (using temporary bridging where necessary) from access A63 to access the sections of the proposed cable corridor accessed from A64 and A61.

The Applicant has undertaken a concept study of how the sections of the onshore cable corridor could be accessed if accesses A-61 and A-64 were to be removed and instead accessed from access A-63 with onward connections required as follows:

A-61 removed requiring onward connection to the cable corridor via A-63 and the onshore substation site: A 6m wide haul road would be required from the proposed access road (from A-63) to the east or west of the onshore substation construction footprint owing to the significantly increased complexities of constructing the substation with a haul road through this area. The haul road routed along the boundaries of the onshore substation footprint would need to accommodate the turning circles for construction vehicles that need to access the cable corridor further south. This would impact the proposed mitigation measures around the substation footprint and also require clearance of trees and vegetation and installation of a temporary bridge over the tributary watercourse at the southern end of the onshore substation site. The design of such a bridge in terms of footprint would be subject to detailed engineering design and would need to account for an appropriately sized crossing to ensure there is no restriction of the watercourse flow during flood conditions. The footprint of the bridge overall is assumed to be larger than just the 6m haul road to account for these factors. It is estimated that such a bridge would likely need to span a length of >20m to fully avoid the area with highest risk of surface flooding. The construction of this would potentially also affect the construction design and programme of the substation itself. The Applicant considers that a reasonable to assumption for additional cost for this to be included is in excess of £1m.

The changes required to accommodate a haul road on the west of the onshore substation footprint would require additional loss of trees and hedgerows which are currently retained on the western side of the onshore substation footprint. This would compromise the mitigation afforded by the retention of this vegetation which is also to be reinforced by advance planting and overall provides the necessary mitigation for dormice on the substation site. This is described further in Section 3.5 of the **Design and Access Statement [REP3-013]**, Design Principle TE2 and shown on the Indicative Landscape Plan in Appendix D of the **Design and Access Statement [REP3-013]**. Loss of this mitigation would compromise the ability to obtain a European Protected Species License for the works. Any further loss of trees or advance planting in that area would also result in a loss of the retained screening for views from Oakendene Manor.

A haul road to the east of the onshore substation construction footprint would also potentially result in further vegetation loss and further fragmentation of dormouse habitat. The loss of habitat with the additional clearance of vegetation to facilitate a temporary bridge to provide access to the cable construction corridor would also lead to fragmentation and impacts on bats too.

The use of a trenchless crossing (TC-27 secured in Appendix A – Crossing Schedule of the Outline Code of Construction Practice [REP3-025] (updated at Deadline 4)) was included in the project design to avoid this fragmentation, avoid impacting the watercourse, and importantly maintaining the existing screening of the views into the onshore substation construction site and into the operational phase. The loss necessary for a temporary bridge cannot be quantified but would significantly remove the effectiveness of this mitigation while still entailing the cost of a trenchless crossing plus the cost of additional bridging.

A-64 removed and onward access to the Bolney cable connection works: Access to the cable route east of Kent Street would involve the haul road crossing Kent Street and the ditches that run alongside it. The crossing point would be located at the northern end of the site to reduce interface



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		with the onshore substation construction. An additional 6m width of vegetation removal would be required on the West side of Kent Street to allow the crossing plus any requirements for visibility if use of banksmen was not agreeable with the highways authority. Such a crossing of Kent Street would need to allow for culverts for the ditch running north – south. As with the above option, relevant requirements for turning circles for safe construction access of all types of required vehicles to occur in the work site and across the Kent Street crossing would need to be implemented. These are expected to conflict with the proposed mitigation measures around the substation and would restrict the construction programme and design of the onshore substation itself.
		In this location, the design included a trenchless crossing (TC-28 in Appendix A – Crossing Schedule of the Outline Code of Construction Practice [REP3-025]) of Kent Street to maintain the screening during construction and operation as well as the habitat running adjacent to Kent Street.
		The use of the eastern side of the substation site in replacement of accesses A-61 and A-64 would also conflict with other works and their timing including diversion of the UKPN 132kv cable, the space set aside for drainage which would be required in construction and operation (shown in the <b>Outline Operational Drainage Plan [REP3-023]</b> (updated at Deadline 4) and the advance planting identified along the eastern edge of the site identified in the <b>Design and Access Statement [REP3-013]</b> .
		The Applicant notes that the use of haul roads described above would remove the use of Kent Street by construction traffic other than the crossing described. This would be likely to reduce or avoid the significant effect related to traffic and transport on Kent Street. However, the significant constraints to use of A-63 only during construction, and the additional cost makes the use of A-63 a significant risk to delivery of the Proposed Development. This, combined with the reduction in effectiveness of secured ecological and landscape mitigation, weigh heavily against a change to the application proposals in this location.
46	The Applicant to provide a note on the impact of the proposed Kent Street traffic management strategy on the overall traffic modelling for the Proposed Development.	Please see <b>Appendix A</b> which provides a joint response to Action Points 46 and 57. This note has demonstrated that with the traffic management strategy in place, construction traffic flows at Access A-62 will remain below the overall peak week for construction traffic at this junction and section of the A272. The conclusions of <b>Chapter 32: ES Addendum, Volume 2</b> of the Environmental Statement (ES) <b>[REP1-006]</b> will therefore not be impacted by introduction of the proposed traffic management strategy and remain valid.
47	The Applicant to provide a note on how the proposed works at accesses A64 and A61 would impact the landscape setting.	The proposed works at access A-61 including the assumed vegetation loss is within the landscape and visual impact assessment (LVIA) baseline / assessment. The change in design therefore does not alter the conclusions of the Environmental Statement (ES).  The proposed works at access A-64 including 10m loss of hedgerow and a single oak tree to widen the existing access point will result in a new effect on the landscape setting, contributing to a significant effect previously noted on landscape receptors in Appendix 18.3: Landscape assessment, Volume 4 of the ES [APP-169].
48	The Applicant to demonstrate using swept path analysis that HGVs would be able to enter and exit accesses A64 and A61 within the proposed Order Limits.	Concept designs and swept path analysis for accesses A-61 and A-64 have been included in an update to the Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies included within Appendix D of the Outline Construction Traffic Management Plan [REP3-029] updated at Deadline 4. The swept path analysis demonstrates that a cable drum lower loader, as the largest vehicle that would use accesses A-61 or A-64 can safely access and egress each junction.
49	The Applicant to confirm whether the 8 proposed passing places located on Michelgrove Lane can be constructed within the proposed Order Limits and are on private or highway land.	The Applicant can confirm that the proposed passing places shown on Sheet 12 of the Onshore Works Plans [APP-009] and Sheets 11 and 12 of the Onshore Land Plans [PEPD-003] can be constructed within the proposed DCO Order Limits.  The Applicant can also confirm that the proposed passing places are not within the West Sussex County Council highway boundary. As recorded in the Book of Reference [PEPD-014] (updated at Deadline 4), the passing places fall under the current ownership or reputed ownership:



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response
		Angmering Park Farms LLP: 11/14, 11/15, 12/2 and 12/3
		Patricia Jenkin trading as J&G Jenkin and Sons: 12/6 and 12/7
		Peter Brian Jenkin trading as J&G Jenkin and Sons: 12/7
		Caroline Jane Mcintosh:12/8
		Worthing Borough Council: 12/10 and 12/11.
50	The Applicant to outline the proposed strategy for maintaining the safe passage of pedestrians, cyclists and horse riders along Michelgrove Lane during construction activities.	The Applicant can confirm that additional information has been provide within Section 8 of the Outline Construction Traffic Management Plan [REP3-029] updated at Deadline 4 on the general principles to be applied during the construction phase in relation to pedestrians, cyclists and equestrians. In addition, an update has been made to Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies included within Appendix D of the Outline Construction Traffic Management Plan [REP3-029] updated at Deadline 4 to provide specific controls for Michelgrove Lane.
		Conflicts with pedestrians, cyclists and equestrians using Michelgrove Lane will be managed in accordance with the requirements set-out in Section 8 of the Outline Construction Traffic Management Plan [REP3-029] updated at Deadline 4. Specifically in relation to Michelgrove Lane, this will require construction traffic vehicles to:
		Reduce vehicle speeds to 30mph on approach to where Public Right of Way (PRoW) 2174, 2263 and 2208 meet Michelgrove Lane;
		Pull into passing bays and wait for pedestrians, cyclists or equestrians to pass before continuing along their journey; and
		Where waiting is required for equestrians, heavy goods vehicle (HGV) drivers will also be required to turn off their engines until the equestrians are at least 20m away to avoid startling the horse(s).
		Signage will pe placed on Michelgrove Lane to warn construction traffic drivers on approach to PRoW. Signage will also be provided on the PRoW themselves in accordance with the Outline Public Rights of Way Management Plan [REP3-033].
51	The Applicant to consider the potential impact of vibration and other construction and use effects, on the ancient monument located in close proximity to the proposed haul road from access A28 to the proposed cable corridor.	The temporary construction access A-28 (Work No 13, Sheet 16 of the Onshore Works Plans [PEPD-005] is located to the west of the Scheduled monument Muntham Court Romano-British site (1005850), as shown on Figure 25.2d in Chapter 25: Historic environment – Figures (Part 1 of 5), Volume 3 of the Environmental Statement [APP-112].
		The monument as described in the scheduled monument description comprises remains of an Iron Age defended settlement and Romano-British shrine. The Iron Age defended settlement survives as low earthworks and below-ground remains at the summit of the hill including several hundred postholes, a storage pit and enclosure ditch. A Romano-British shrine overlies part of the settlement and survives as an earthwork denoted by a circular depression, about 11m in diameter, as well as below-ground remains. A number of associated shallow pits are also recorded. The principal archaeological remains for which the monument is scheduled therefore comprise low earthwork and buried archaeological remains within the circular wooded area at the summit of the hill. Remains of a wider field system are also evident within the monument and in the field to the west of construction access A-28.
		The monument was first designated as a scheduled monument in 1953 and the scheduled monument record was reviewed and enhanced in 2014. The boundary of the monument appears to have been drawn to include to include the principal archaeological remains described above and which have been assessed as being of national importance and extended to the nearest field boundaries extant at the time of scheduling. The 2014 review confirmed the monument boundary but it is also identified other surviving archaeological remains within the vicinity which are not included within the scheduled area because these have not been formally assessed. These are described as a Roman well and buried remains of buildings on the southeast facing slope of the hill. This is the opposite side of the hill to the location of temporary construction access A-28.



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response
		At its closest point the monument boundary lies 2m east of construction access A-28 whilst the Iron Age defended settlement and Romano-British shrine itself are approximately 40m east of construction access A-28.
		Unlike upstanding historic structures, which can be fragile, earthworks and below ground archaeological remains of this type are not normally considered to be sensitive to vibration effects except in the case of intense vibration of the type which may be experienced in the immediate vicinity of pile installation or vibro compaction. This is because any vibration would need to be of sufficient intensity to damage the below ground stratigraphy or to damage embedded artefacts in order to materially affect the archaeological remains.
		It is also notable that there are many scheduled monuments that are located alongside roads or tracks or which have them cutting through a monument. Effects of vibration from traffic is not normally considered to be a notable risk factor for below ground archaeological remains in such cases.
52	The Applicant to consult National Highways on the use of traffic signals at proposed access A28, sharing the assessments undertaken at this location to date.	The traffic signal assessments for access A-28 are included within the updated Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies included within Appendix D of the <b>Outline Construction Traffic Management Plan [REP3-029]</b> updated at Deadline 4. The Applicant will share this document directly with National Highways in addition to submitting it into Examination at Deadline 4.
53	The Applicant to update the Outline Construction Traffic Management Plan to reflect the proposed change of use of access A24 to operational only.	The Applicant has updated the Outline Construction Traffic Management Plan [REP3-029] and provided this at Deadline 4.
54	The Applicant to consider use of access A01 for all operational access requirements in the place of access A04.	The Applicant has reviewed the operational access requirements in the area of accesses A-01 and A-04. The Applicant will retain the operational access A-04 in order to access to the TC-01 transition joint bays via the least disruptive route to the agricultural land user, which may be via access A-04 or access A-01. If the landfall is constructed from Trenchless Compound location "TC-01a" (subject to further design and surveys to be undertaken post consent), operational access A-04 would no longer be practical and would not be used.
55	The Applicant to provide an update on water neutrality and the implications for traffic movements after the meeting with Horsham District Council and Natural England.	During a meeting on 01 May 2024 with Horsham District Council, water neutrality was discussed and the Applicant presented the estimated volumes produced to answer the Examining Authority's First Written Questions WE1.1 c) in Table 2-19 within Deadline 3 Submission – 8.54 Applicant's Responses to Examining Authority's First Written Questions (ExQ1) [REP3-051].
		In light of the types of estimates volumes presented by the Applicant, Horsham District Council communicated their view that construction water use from the Proposed Development is capable of being considered as part of the baseline water use that occurred pre-position statement, a headroom capacity that would remain for the duration of the construction works, owing to a housing trajectory within the Council's emerging new development plan.
		On this basis, Horsham District Council confirmed that construction water use could be screened out without the need for tankering all construction water in. If this was the case, some activities at the main construction compounds could be mains connected and screened out (as opposed to construction water being tankered in for construction). Providing this becomes fully agreed with Natural England welfare facilities, wheel washing and batching of cement bound sand or concrete would be mains connected which would remove the need for tanker movements associated with those activities, which collectively account for over half of the movements which were presented in Table 2-19 within Deadline 3 Submission – 8.54 Applicant's Responses to Examining Authority's First Written Questions (ExQ1) [REP3-051].
		Horsham District Council noted during the meeting on the 01 May 2024 that the indicative volumes represented very low usage in the context of other development and could likely be accommodated by an offsetting scheme (such as Sussex North Offsetting Water Scheme (SNOWS)) if access to such a future scheme were available. Under that scenario then the substation would be mains connected for the purpose of operational welfare facilities which would again remove the need for all tanker movements that were indicated for that activity between 2030 – 2060 in Deadline 3 Submission – 8.54 Applicant's Responses to Examining Authority's First Written Questions (ExQ1) [REP3-051].



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response
		The Applicant reiterates that other options are available should SNOWS not be and that there is not an over-reliance on SNOWS being in place by 2030. These are set out in Chapter 26: Water environment, Volume 2 of the Environmental Statement [APP-067], the Design and Access Statement [REP3-013] (updated at Deadline 3) and secured by Requirement 8 [2] in the Draft Development Consent Order [REP3-003] (updated at Deadline 4.  During the recent meeting held with Natural England, Horsham District Council and the Applicant on 22 May to discuss this further and Natural England
		indicated that on the face of it the positions on water neutrality outlined above seemed sensible and reasonable for both construction and operational phase use. Natural England and Horsham District Council are set to have another meeting in due course to fully confirm that this is the case.
56	The Applicant to update all traffic and access related documents in the Environmental Statement using the latest traffic data and modelling assumptions. (D5)	The Applicant will provide updates to the Outline Construction Traffic Management Plan [REP3-029], Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the Environmental Statement (ES) [REP3-021] and Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006] as necessary at Deadline 5 to reflect latest traffic data and construction traffic assumptions.
57	The Applicant to submit into the Examination and to provide Cowfold Parish Council with details of turning movements at all junctions and proposed accesses along the A272.	Please see <b>Appendix A</b> which provides a joint response to Action Points 46 and 57.
58	The Applicant to provide a response on the traffic movement discrepancies discussed during ISH2 for accesses A62 and A63.	The Applicant understands that the CowfoldvRampion Deadline 3 submission [REP3-099] makes reference to discrepancies between construction traffic estimates provided in Table 2-9 of Deadline 2 Submission – 8.51 Category 8: Examination Documents – Applicant's Response to Affected Parties' Written Representations [REP2-028] and Table 2-3 of the Deadline 2 Submission – 8.52 Category 8: Examination Documents – Applicant's Response to Parish Councils and MP's Written Representations [REP2-014] and apologises for the confusion caused.
		The peak week construction traffic flows for all access junctions is provided within Table 6-8 of Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the Environmental Statement (ES) [REP3-021] with these number forming the basis of assessments provided in Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006]. This shows that Access A-62 will serve approximately 866 vehicles during the peak week of construction activity and A-63 will serve 900 vehicles. During these peak weeks, 612 light goods vehicles (LGVs) will use access A-62 (306 in each direction) and 564 LGVs will use access A-63 (282 in each direction).
Agen	da Item 8 – Onshore Archaeology	
59	The Applicant to submit the Low Carbon Solar Park 6 judgement into the Examination – Also to explain the consequence of the Planning Judgement, with commentary.	The Applicant has submitted the Low Carbon Solar Park 6 judgement and response to this Action Point in <b>Appendix B</b> of this document.
60	West Sussex County Council / the Applicant to consider and respond on possible alterations to Requirement 19 and related Commitments, C-79, C-225 with the scope of removing ambiguity in respect to trail trenching.	The Applicant submitted the update to the Outline Onshore Written Scheme of Investigation [REP3-035] at Deadline 3 and is awaiting the response from West Sussex County Council on the Onshore Written Scheme of Investigation and Requirement 19 of the Draft Development Consent Order [REP3-003]. Therefore, the Applicant has no further comment at this time but will continue to engage with West Sussex County Council on any comments and provide an update if necessary, prior to the close of the Examination.



### PINS Action points arising from Issue ref Specific Hearing 2

#### **Applicant's response**

West Sussex to respond to the submitted Written Scheme of Investigation.

As requested in AP7 and AP36,
Applicant to submit a document
specifically addressing SDNPA
archaeology concerns explaining the
likely effects of the Proposed
Development on those features of
SDNP in the context of its elevated
status and how the purposes of the
SDNP, particularly in relation to its
ecological function, would be furthered
by the Proposed Development by D4.

The Applicant has provided an update to the **Deadline 1 Submission – 8.25.5 Applicant's Post Hearing Submission – Issue Specific Hearing 1 Appendix 5 – Further information for Action Point 27 – South Downs National Park [REP1-024]** at Deadline 4. The information for Action Point 61 is provided Section 1.4 under the heading for Special Quality 6: Well conserved historical features and a rich cultural heritage.

The Applicant may wish provide an update to REP1-024 to provide a comprehensive, cross-cutting document addressing all relevant matters affecting the SDNP.

### Agenda Item 9 – Draft DCO

SDNPA to review its comments on the adequacy of Articles 5, 33, 34, 44 and 55 in light of more recent documents submitted into Examination and whether these are best sought in the Requirements.

Not applicable.

Applicant to consider Commitment in the CR to monitor operation noise of the extension to the National Grid (Work No.20) Bolney substation. The noise arising from the existing National Grid Bolney substation extension works is different in characteristics arising from the transformers and compensation equipment which operate continuously at the onshore substation at Oakendene and generate noise emissions. It has been noted by the Applicant in the description of works number 20 that transformers are referred to, however in this location it would be a small instrumentation transformer that is necessary for measurement purposes as opposed to the types of transformer at the onshore substation at Oakendene. The Applicant has made an amendment to this work description to remove transformers of the type at Oakendene and include "instrumentation-transformers" and "other instrumentation and control equipment" in the **Draft Development Consent Order [REP3-003]** submitted at Deadline 4 to clarify this point.

The only noise emitting equipment at the existing National Grid Bolney substation extension works is the switchgear system which would only be used if the entire windfarm needed to be isolated from the grid. In that event there would be a single on-to-off switch and a single off-to-on, so two noise events per isolation exercise. This would only ever happen in an emergency.

The Applicant considers that the number of times that the operational state of the switchgear could change in a year will be zero in most scenarios. The duration of the switchgear change in operational state (from on to off- or vice versa) is approximately 300ms (i.e. one third of a second). Two potential emissions of 300ms duration each, in a year, would be extremely difficult to detect and it would be impractical to monitor to confirm their existence or



PINS ref	Action points arising from Issue Specific Hearing 2	Applicant's response
		otherwise. The costs associated with the monitoring would be significant and certainly disproportionate given that noise from the switchgear would be negligible.
		The distance of the nearest receptors (approximately 200m) from the at the existing National Grid Bolney substation extension are sufficiently large, that other more regular environmental noise events, such as single vehicle pass-bys or aircraft overflights, would give rise to higher sound levels, for longer periods, than would be possible from the switchgear operation.
		In summary, the Applicant considers that the very infrequent noise generation from the switchgear would not give rise to any observable effect. As such monitoring it would be impracticable, disproportionate and inconclusive with no additional mitigation possible for equipment operating in emergency situations.
64	Applicant to consider amendments to Requirement 33, as requested by Horsham District Council, relating to Skills and Employment Strategy.	The Applicant has updated Requirement 33 in the <b>Draft Development Consent Order [REP3-003]</b> as submitted at Deadline 4 in response to the comments from Horsham District Council.
65	Applicant to consider committing to a liaison officer and to provide an Outline Construction Communication Plan into Examination (Requirement 34)	The Applicant intends to submit an Outline Construction Communication Plan into the Examination at Deadline 5. Provision has been made for this in the <b>Draft Development Consent Order [REP3-003]</b> as updated at Deadline 4.



### Table 2-2 Applicant's responses to Action Points arising from Compulsory Acquisition Hearing 1

### PINS Action points arising from Compulsory Applicant's response ref Acquisition Hearing 1

### Agenda Item 2 – The Applicant's Case for Compulsory Acquisition (CA) and Temporary Possession (TP)

The Applicant to provide a detailed note setting out how the Order Limits have been determined and the proposed development would be constructed with Compulsory Acquisition (CA) powers only being exercised over the minimum land required, referencing the relevant Articles in the draft Development Consent Order (draft DCO).

The Applicant submitted evidence of how the grid connection was determined in **Chapter 3: Alternatives**, **Volume 2** of the Environmental Statement (ES) **[APP-044]** and further submissions during examination including further consideration of Fawley and Dungeness **[REP1-019]** and in response to written questions on alternatives responded to in **[REP3-005]**. This is an important starting point to set the context and it's not the intention to revisit this evidence here but to set out the iterative process of refinement that has taken place to reach the proposed DCO Order Limits in the DCO Application.

Following the confirmation of the connection point at Bolney which included the output of the National Grid Connections Infrastructure Options Notification process, a broad corridor was developed to inform the EIA scoping process and a non-statutory consultation undertaken. At this stage, the scoping red line included an approximate width of 2km as a starting point to identify the cable corridor and a non-statutory consultation exercise was undertaken in January to February of 2021.

The onshore corridor was refined through workshops which interrogated technical, environmental and land matters along the potential onshore cable corridor from Climping to Bolney. This included review of information from desk-based studies, information provided by stakeholders and surveys undertaken.

This led to refinement of the Order Limits published at the first round of statutory consultation in July to September 2021, relaunched in February to April 2022. This included consultation on optionality for the cable corridor, onshore substation locations and a typical open cut cable corridor width of 50m.

Detailed review of feedback from statutory bodies, members of the public and landowners including ongoing consultation with them led to consideration of over 50 potential corridor and route refinements. Again, these were subject to multiple workshops using the BRAG system to review proposals and where a proposal was considered not feasible an alternative way of meeting the suggest change was considered. This led to the second round of statutory consultation in October to November 2022, with subsequent targeted consultation to finalise the onshore cable corridor in February to March 2023 including further reductions in widths of the draft Order Limits. A breakdown of the route refinements from these exercises is presented in **Chapter 3: Alternatives, Volume 2** of the Environmental Statement (ES) **[APP-044]** from page 47 to 67.

It is also notable that while it has been necessary to retain some flexibility, the typical final cable corridor width was reduced from the original 50m to 40m, and 30m between Oakendene and Bolney. It is these multiple rounds of analysis and iterations of the cable corridor that have led the Applicant to the proposed DCO Order Limits and clearly an extensive and thorough process has evolved the limits to where they are in the Application.

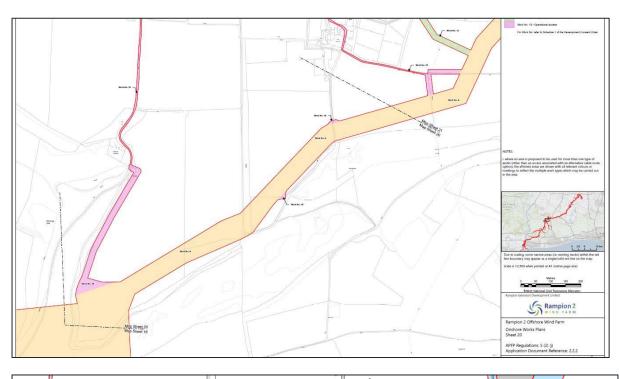
The approach to settling the proposed DCO Order Limits and the land acquisition strategy (both voluntary and compulsory acquisition) has been carefully co-ordinated so as to minimise the extent of land required, whether permanently or temporarily.

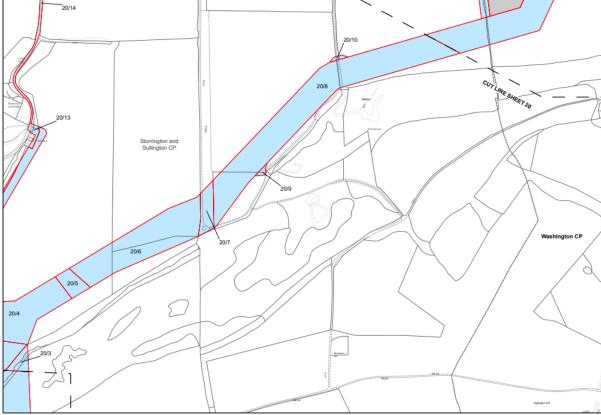
The proposed DCO Order Limits, and the limits of the Onshore Works shown on the **Onshore Works Plans [PEPD-005]**, set the envelope within which the authorised works described in Schedule 1 to the DCO may be constructed. The Order Land, shown on the **Land Plans Onshore [PEPD-003]** identifies the extent of the land area over which the necessary corresponding land or rights over land may be acquired for those works.

Adopting the example of Work No. 9 (onshore connection works), for which the majority of the land rights along the cable corridor are required; taking the stretch of the cable corridor seen on Sheet 20 of the **Onshore Works Plans [PEPD-005]** (extract below), this land is shaded orange for work 9; and taking plot 20/8 on the corresponding sheet 20 of the **Land Plans Onshore [PEPD-003]**) (extract below), it can be seen that this parcel is coloured blue which means it is subject to the acquisition of rights by the creation of new rights or the imposition of restrictive covenants.



Article 25 and Schedule 7 to the Order confirm that specifically, in respect of Plot 20/8 a package of Cable Rights and a Cable Restrictive Covenant are sought over this land.







#### Order Limits, Onshore Works Plans, Onshore Land Plans

The extent of the proposed DCO Order Limits in this location, is the maximum width of land over which Work 9 may be implemented and is between 60m-80m. Work No. 9 may be constructed anywhere within the extent of the area shaded orange and labelled Work No. 9 on the works plans.

The corresponding area on the Land Plans Onshore [PEPD-003] matches the extent on the Works plans to ensure that the Applicant has the necessary land rights to carry out those works anywhere within the works area.

As explained in LR 1.9 of Deadline 3 Submission – Applicant's Responses to Examining Authority's First Written Questions (ExQ1) [REP3-051] there is flexibility within the proposed DCO Order Limits as to where the cable construction corridor may be located so as to account for detailed design after ground investigation surveys, with the potential to identify as yet unknown constraints and features.

The cable construction corridor will be typically 40m for open-cut sections of the cable construction corridor, as explained in the Environmental Statement (ES) as described in paragraph 4.5.8 of **Chapter 4: The Proposed Development**, **Volume 2** of the ES **[APP-045]** and illustrated in Figure 4-19. The construction corridor is anticipated to comprise the cable trenches, the haul road, and subsoil and topsoil storage.

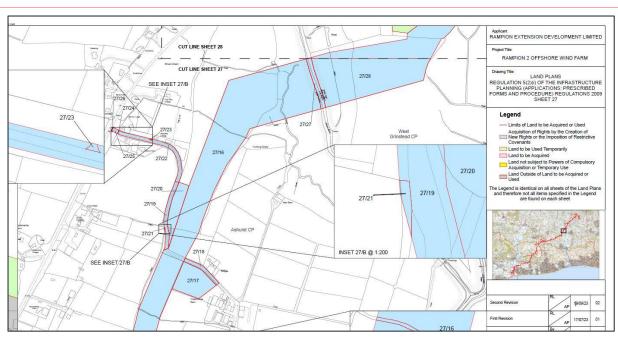
Plot 20/8 is expected to be subject to the typical 40m construction corridor for which open-cut methods of construction will be used.

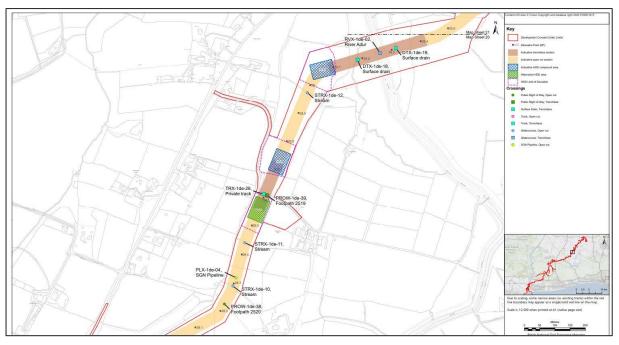
Paragraph 4.5.8 of Chapter 4: The Proposed Development, Volume 2 of the ES [APP-045] and LR1.9 in Deadline 3 Submission – Applicant's Responses to Examining Authority's First Written Questions (ExQ1) [REP3-051] also explains the instances where the onshore construction corridor is required to be wider than the standard 40m due to the wider spacing requirements of the cables and need for obstacle avoidance.

Where trenchless crossing is to be carried out, the associated compounds (being either 50m x 75m or 120m x 100m (landfall only) as required) are also wider than the typical cable corridor. These compounds are described in Section 4.3.4 in the Outline Code of Construction Practice [REP3-025] which is secured by Requirement 22 of the Draft Development Consent Order [REP3-003] (updated at Deadline 3).

This does not apply to Plot 20/8, but an example of a land parcel where a trenchless crossing has been identified on the Crossing Schedule comprising Appendix A to the Outline Code of Construction Practice [REP3-025] for a trenchless crossing, and for which the proposed DCO Order Limits are approximately 180m wide is plot 27/28. Requirement 6 (Cable Parameters) in Part 3 of Schedule 1 to the Draft Development Consent Order [REP3-003] requires that trenchless technology be used to install the cable circuits in the locations identified in the Crossing Schedule, which will form part of the Code of Construction Practice (CoCP) which is to be approved pursuant to Requirement 22 of the Draft Development Consent Order [REP3-003]. Extracts from the Onshore Land Plans and the Crossing Schedule are provided below.







Post-Consent Refinement and approval of the location of the construction corridor within the Order Limits

If and when the Order is made, the Applicant will then carry out a detailed scheme of site investigation work along the cable route, alongside further environmental surveys such as archaeological surveys required by the **Outline Onshore Written Scheme of Investigation [REP3-035]**. These surveys and investigations would be carried out over the extent of the land within the proposed DCO Order Limits, relying on the powers to survey and investigate the land onshore in Article 19 of the Order if necessary.

ref



### PINS Action points arising from Compulsory Applicant's response **Acquisition Hearing 1**

The information gathered from such surveys will then be collated into a further constraints and features dataset which will inform the onshore cable construction corridor design and provide more certainty as to the location of the corridor. The mitigation hierarchy will be followed to finalise micrositing decisions and reduce the impacts of the final design as much as possible.

In order to secure finance, the project will seek to secure a Contract for Difference (CfD), the Proposed Development delivers revenue return security for low carbon projects. Once a CfD has been secured, and as the project approaches the construction phase, work will progress on the Outline management plans, in particular the stage-specific CoCPs and (of particular relevance) the Construction Method Statements (CMSs). The stagespecific CoCPs (DCO Requirement 22) (and construction method statements – DCO Requirement 23) for works other than onshore site preparation works will include the cable routing and descriptions of any required works outside the standard working corridor width of 40m. (For the connection from the onshore substation at Oakendene to the National Grid Bolney substation, where two cables are required, open cut sections of the corridor will not exceed 30m in width as per paragraph 4.5.10).

This detailed design will take into account any commitments made in the DCO itself, or in other management plans, and any commitments given in voluntary land agreements which have been entered into with affected parties. In preparing the CMS, the project will comply with the Agricultural Liaison section of the CoCP (Paragraph 2.6 of the Outline Code of Construction Practice [REP3-025]).

"The ALO will work with stakeholders to enable the construction project to be conducted in a manner that respects and accommodates the needs of the agricultural and landowner community while meeting project objectives and DCO requirements. Liaison will take place with the landowner community prior to the finalisation of the Construction Method Statement and where practicable and subject to engineering and environmental requirements, Rampion 2 will take into consideration farming impacts and considerations prior to that finalisation and submission to discharge authorities.'

The stage specific Construction Method Statement [APP-255], which is required to be approved by the relevant planning authority for the relevant stage of the works pursuant to Requirement 23(f) of the Draft Development Consent Order [REP3-003], will include the final location and width of the cable construction corridor for the relevant stage. A plan will be included in this document showing the working corridor and any wider areas required for trenchless crossings, together with the associated trenchless crossing compounds in accordance with the response given to the LR1.9 in Deadline 3 Submission – Applicant's Responses to Examining Authority's First Written Questions (ExQ1) [REP3-051].

#### **Construction Phase: Temporary possession powers**

By virtue of the power sought in Article 33(1)(a)(ii), the Applicant may (prior to acquiring permanent rights or imposing such restrictive covenants) take possession of any of the Blue Land and Pink Land on the Land Plans Onshore and "construct any works on that land as are mentioned in Part 1 of Schedule 1 (authorised development) and Part 2 of Schedule 1 (ancillary works) on that land".

This enables the Applicant to take possession of the cable construction corridor and carry out the necessary works.

The Applicant will narrow down the area of land over which it will be needed to exercise construction rights. Affected parties will be kept appraised of the process as it progresses.

Once the Onshore Construction Method Statement for the relevant stage of the works affecting Plot 20/8 is approved, it is intended that the Applicant would rely upon these powers to take temporary possession of a 40m construction corridor within Plot 20/8 to carry out Work 9 on this land.

The final layout and spatial extent of the laid cables within the 40m corridor will be determined during detailed design. Flexibility within the 40m construction corridor is however still required due to the potential for obstacles and ground conditions that are only revealed during the construction works. The use of temporary possession powers will therefore enable the Applicant to get underway with the construction works under temporary possession powers, while it is still ascertaining and refining the scope of the requirement for the acquisition of permanent rights and/or the imposition of permanent restrictive covenants.



In this way, the Applicant is able to ensure that permanent compulsory acquisition powers are only exercised over the minimum land required.

An Agricultural Liaison Officer(s) (ALO) will be employed to assist in the day-to-day liaison between landowners, farmers and occupiers, and the client and contractor for the duration of the project construction phase. Part of the role of the ALO will be to:

- liaise with stakeholders to agree temporary, and permanent accommodation works to include fencing requirements, gates, crossing points, crossing surfacing, water supplies, stock relocation and access to severed land parcels and report and oversee repairs required as a consequence of damage caused by Contractor(s);
- engage with stakeholders to convey project plans, timelines, and potential impacts on property related issues and agricultural activities to identify
  and develop mitigation measures through mutually beneficial solutions to minimise disruption;
- engage with landowners on construction traffic routeing and general construction matters;
- attend relevant project progress meetings.
- work with stakeholders to enable the construction project to be conducted in a manner that respects and accommodates the needs of the agricultural and landowner community while meeting project objectives and DCO Requirements.

### Permanent Acquisition of the Cable Rights and Cable Restrictive Covenant

Once installation of the cable is complete, '.as built' plans will be prepared to show the permanent cable easement which comprises the cable and a protective buffer. This plan will be shared with the landowner and form the basis of the 99-year voluntary deeds of grant for the easement or the compulsory acquisition.

As acknowledged in the footnote to Table 8-1 of the Cable and Grid Connection Statement [APP-034] a typical permanent corridor easement is likely to be 20m, but this may vary according to local conditions. A wider permanent easement might be required where the cable spacing is wider due to the cable rating requirements or obstacle avoidance reasons. A maximum permanent corridor of 25m for a typical permanent corridor, i.e. excluding horizontal directional drilling (HDD) crossing locations has been assessed in the Environmental Statement as a reasonable worst-case scenario.

Plot 20/8 is expected to require a standard 20m easement.

The acquisition of permanent rights (and the imposition of permanent restrictive covenants, as appropriate) will be required for the final (narrowed down) cable easement. This will ensure protection for the maximum four cable circuits laid in ducts with appropriate spacing between cables of up to 5m and a separation buffer from the boundary of the permanent easement.

The Applicant intends to exercise its compulsory acquisition powers to acquire the new rights and restrictive covenants pursuant to articles 23 and 25 when that final permanent corridor extent and location are known, together with any ancillary rights such as access rights that might be needed over the remaining land to 'join up' with the final permanent corridor. See further the Applicant's response to Action 6 below in this respect.

The wider construction corridor land which is no longer required once construction has completed, will be reinstated and returned to the landowner, as required by Articles 33(5) and 33(6) of the **Draft Development Consent Order [REP3-003]** when temporary possession of land has been taken.

Reinstatement of land will be carried out in accordance with the outline management plans including the Outline Soils Management Plan [REP3-027] pursuant to Requirement 22 of the **Draft Development Consent Order [REP3-003]** and the **Outline Landscape and Ecology Management Plan [REP3-037]** pursuant to Requirement 12 of the **Draft Development Consent Order [REP3-003]**.

### Proposed further expansion and clarification of the ALO role



The Applicant proposes updating the **Outline Code of Construction Practice [REP3-025]** Section 2.6 at Deadline 5 to include a fuller description of the proposed communications between the Agricultural & Land Liaison Officer (ALLO) and landowners so as to provide Affected Parties with more detail as to what to expect as the Proposed Development progresses. The role will also be re-named so as to be clearer that it will involve communication with all land managers, including agricultural, equestrian, estate and nature conservation managers. The proposed updated text is set out below and will be submitted in an updated version of the **Outline Code of Construction Practice [REP3-025]** at Deadline 5:

Agricultural & Land Liaison Officer

Post DCO Consent Surveys

Further to DCO consent, engagement with the landowner will take place prior to SI, archaeological and any appropriate ecology surveys are carried out by the Applicant. Communications with landowners will take place both before the surveys are carried out and after the surveys to inform the landowner about any outcomes.

2.6.1 Prior to Construction an Agricultural Liaison Officer(s) (ALLO) (or person of similar title) will be employed to assist in the day-to-day liaison between landowners, farmers and occupiers, and the client and contractor prior to and for the duration of the project construction phase.

The role of the ALLO will be to engage with landowners prior to construction and oversee the works being delivered in compliance with legal agreements, consents and approved construction methodologies so as to mitigate disruption to agricultural, equestrian and other rural operations particularly where they intersect with agricultural land or diversified land and rural environments. Duties to be conducted by the ALLO at different phases will be the following:

Preparation of Stage specific CoCP's and CMS's and submission for discharge by LPA

Prior to the submission of the stage specific CoCP and Construction Method Statement to LPA's: the ALLO will be appointed and will engage with landowners to inform them of the approximate required land take on their land including likely working corridor width, trenchless crossing locations and limits of deviation, likely compound sizes and a draft indication of which areas are likely to be fenced. Prior to submission of the stage specific CoCP and CMPs the ALLO will prepare plans showing working corridor alignment, trenchless crossing locations and areas wider than 40m, present these to the landowner and take account of any responses.

The landowner's use of and management requirements of the land will, where reasonably practicable be taken into consideration in the finalisation of the of the stage specific CoCP and CMS.

Prior to Construction: a Construction notice would be served to set out the land requirements in accordance with the above.

#### Construction

Liaison with stakeholders to agree temporary, and permanent accommodation works to include fencing requirements, gates, crossing points, crossing surfacing, water supplies, stock relocation and access to severed land parcels and report and oversee repairs required as a consequence of any damage caused by Contractor(s);

Engagement with stakeholders to convey project plans, timelines, and potential impacts on property related issues and agricultural activities to identify and develop mitigation measures through mutually beneficial solutions to minimise disruption;

To engage with landowners on construction traffic routeing and general construction matters;



Ensure that the project carries out works in accordance with the DCO requirements and management plans as they relate to agricultural matters. In particular to ensure compliance with the stage specific soil management plan and the stage specific construction method statements;

Monitor the project's pre-construction, drainage and soil surveys and carry out pre and post construction condition schedules liaising with stakeholders with respect to field entrances and access and egress to construction strips;

To attend relevant project progress meetings.

2.6.2 The ALLO will work with stakeholders to enable the construction project to be conducted in a manner that respects and accommodates the needs of the agricultural and landowner community while meeting project objectives and DCO requirements.

2.6.3 Contact details for the ALLO will be made available to landowners and occupiers. The ALLO will be contactable throughout the Contractor(s) working hours. Outside of these times and in the event of emergency, out of hours contact details will be provided.

The Outline Soils Management Plan [REP3-027] also sets out the responsibilities of the ALLO with respect to soils management.

Further to the completion of construction, the land will be restored in accordance with the stage specific SMP and CMS. The final placing of the cables will be communicated to the landowner by the ALLO. Final plans for the permanent easement will be provided by the Applicant to the landowner. The Applicant will also provide details to the landowners of any areas of land which were used for temporary works only, and which are no longer required by the Applicant following completion of construction.

### Agenda Item 3 Funding

The Applicant to submit an updated Funding Statement.

The Applicant confirms it is submitting an updated Funding Statement at Deadline 4.

#### Agenda Item 4 - Special Category Land

No Action Points

Not applicable.

#### Agenda Item 5 – Crown Land and Interests

No Action Points

Not applicable.

### Agenda Item 6 – Statutory Undertakers

If there is no agreement on Protective Provisions with all statutory undertakers prior to Deadline 5, the Applicant and Statutory Undertakers to submit, preferably jointly, Protective Provisions with tracked changes on the differences, together with an explanation for additions/omissions. (D5 latest)

Noted, the Applicant will provide comprehensive details of the agreed position, and of matters not agreed, at Deadline 5

4 National Highways to submit both standard and their suggested version of



project specific Protective Provisions into the examination.

### Agenda Item 9 - Restrictive Covenants

- The Applicant to redraft Article 33(11) to make it clear how the powers over plots 2/28, 33/14 and 33/16 would work in relation to temporary possession and new rights.
- The Applicant to consider amending the draft DCO by inserting the following (or similar) wording into Article 25 at paragraph (7) to clarify how the power over unused rights will be relinquished following the establishment of the cable corridor.
  - "The Applicant will cede/relinquish powers over remaining land subject to subparagraph (1) once the cable corridor location and its width have been established and constructed as part of Part 3, Schedule 1, Requirement 23."

The Applicant has removed reference to Plots 2/28, 33/14 and 33/16 from Schedule 9 (Land of which temporary possession may be taken) to the **Draft Development Consent Order [REP3-003]** and has deleted the reference to these land parcels in Article 33(11). These plots are retained in Schedule 7 (Acquisition of New Rights and Imposition of Restrictive Covenants only) only and the Applicant will rely upon the power in Article 33(1)(a)(ii) to take temporary possession of these parcels, being 'any other Order Land', in advance of the exercise of compulsory acquisition powers. The Applicant has clarified that the purpose and use of the land of which temporary possession is taken under Article 33(1) includes the use of land as a construction compound and for the purposes of duct/cable preparation and stringing out given that these are the temporary purposes for which Plots 2/28, 33/14 and 33/16 are required which were originally expressly noted in Schedule 9 to the **Draft Development Consent Order [REP3-003]**.

The Applicant has given detailed consideration to the Examining Authority's proposed insertion of drafting in Article 25, which seeks to impose a constraint upon the Applicant's ability to exercise authorised compulsory acquisition powers. The proposed drafting asks the Applicant to give up authorised powers of compulsory acquisition over the remainder of the Order Land when the cable construction corridor location and its width have been established and constructed under Requirement 23.

### Inability to define a trigger when CA powers are no longer required over the remainder of the Order Land

Establishing the location of the corridor under requirement 23(f) and constructing it are two very different things. The Applicant is not therefore clear which trigger the Examining Authority has in mind for the relinquishing of compulsory acquisition powers. For the reasons set out below, the Applicant does not consider that either the establishment of the cable construction corridor, or the construction of the permanent cable corridor is appropriate for relinquishing compulsory acquisition powers. To do so risks the Applicant being unable to deliver, operate, maintain or protect the Proposed Development.

It would not be feasible to give up permanent acquisition powers when the cable construction location is established under Requirement 23(f) as part of the relevant stage Construction Method Statement because this would unreasonably constrain the Applicant's ability to construct, operate, maintain and protect the Proposed Development. For example, if powers have been relinquished it would not be possible to adapt to problems that may be encountered during construction that may require varied land rights or a wider cable corridor than anticipated, and it would also prevent the Applicant from exercising compulsory acquisition powers over land outside of the construction corridor, which, as explained further below, will still be necessary in certain scenarios.

The Applicant is aware that some Development Consent Orders (DCOs) have an element of optionality, such as two different mutually exclusive locations for a particular work, and therefore the DCO requires the giving up of powers over the option that is not being taken forward once the final option has been selected. An example being Article 19(3) of the Thurrock Flexible Generation Plant Order 2022. However, the Applicant's **Development Consent Order [REP3-003]** does not contain such optionality where it is a choice between one route or another. Rather the Applicant's draft Order contains flexibility within permitted parameters where the works may be undertaken. Whilst the majority of the land over which compulsory acquisition powers will need to be exercised will be within the cable construction corridor, the Applicant will still need to acquire rights over land outside of the final corridor for other, more limited purposes.

Certain rights will need to be exercised within proposed DCO Order Limits but outside of the final permanent cable corridor and the Applicant's ability to do so must be preserved. For example:

- the ability to acquire rights of access that connect up to the final permanent cable corridor;



- the ability to undertake works such as land restoration and land drainage reinstatement within the proposed DCO Order Limits but outside of the final permanent cable corridor;
- the ability to acquire the landscaping rights and landscaping restrictive covenants over land which does not lie within the linear cable corridor, such as in the vicinity of the Oakendene and Bolney substations;
- the ability to acquire rights relating to utilities apparatus which may be outside of the final permanent cable corridor;
- the need to comply with environmental and ecological requirements that may involve land outside of the final cable corridor; and
- the need to retain rights to undertake surveys and to preserve powers in the order that derive from Article 25 such as those relating to temporary
  use of land for maintaining the authorised project (Article 34).

If the Order were to require permanent powers to be given up over land outside of the final cable corridor following construction of the cable corridor, then this would prejudice the Applicant's ability to construct, maintain, protect and operate the project. Construction of the permanent cable corridor is not therefore an appropriate trigger for confirming that permanent powers are no longer required over the remainder of the Order Land because whilst the as-laid permanent corridor will be known at that point, and will have been communicated to landowners in accordance with the CoCP (as explained in response to Action 1 above), the Applicant may still be exercising or may still need other rights over land within proposed DCO Order Limits that extend beyond the permanent linear corridor.

Nor is it practicable to define an alternative trigger point for the giving up of such compulsory acquisition powers, other than that in Article 24 (Time limits for exercise of authority to acquire land compulsorily or to take land temporarily) which provides the longstop date for exercising permanent acquisition powers.

The Applicant will as soon as practicable provide details to landowners of any land which is no longer required for the Proposed Development (as per the CoCP). The provisions of the Compulsory Purchase Compensation Code also act as an incentive for the Applicant to give bespoke commitments to landowners as soon as it has certainty that it will no longer need to exercise the power to acquire land or rights over areas of land, given the risk of having to pay increased compensation. Those commitments must necessarily be specific to the land in question at the appropriate time and they cannot be prescribed now.

#### **Crichel Down Rules**

Insofar as the request from the Examining Authority seeks to introduce a position equivalent to the Crichel Down Rules if the Applicant has exercised permanent powers over more land than it later transpires is necessary, the Applicant considers that whilst this could arise in principle, it is unlikely to arise in practice due to the Applicant's intention to use temporary possession powers first. If temporary possession powers have been used as intended, then Article 33 (temporary use of land for carrying out the authorised project) requires the reinstatement of land and the giving back of possession once land is no longer needed.

However, in the unlikely scenario that the Applicant has exercised its compulsory acquisition powers in a way which means that it no longer requires some of the rights it has acquired permanently, the Applicant agrees that it would be desirable to relinquish the surplus rights that it has acquired so as to mitigate compensation and impacts upon landowners, but the manner and timing of releasing such acquired rights cannot be prescribed now.

#### Approach taken in other Orders

The drafting and restraint on compulsory acquisition powers sought by the Examining Authority is unprecedented so far as the Applicant is aware. The lack of precedent in DCOs is illustrative of the complexity of seeking to draft a constraint on the exercise of compulsory acquisition powers that provides for all possible scenarios, and it is also illustrative of the significant risk of unintended consequences for the delivery of nationally significant infrastructure projects (NSIPs) if the drafting did not properly cater for all potentialities.



Neither the Sheringham & Dudgeon, Awel-y Môr, Triton Knoll Electrical System, East Anglia One and Two, or the four Hornsea Wind Farm DCOs have had any such constraint imposed on the exercise of compulsory acquisition powers. Rather, the approach taken by these promoters, and accepted by the Secretary of State in making the orders, is consistent with the Applicant's approach, which seeks the authorisation of compulsory acquisition powers over land within Order Limits with reasonable and sufficient flexibility in advance of the detailed design of the project. Those schemes also expressed an intention to rely on temporary possession powers where practicable to minimise permanent acquisition.

Other linear projects with buried infrastructure have also adopted the same approach. For example, the Examining Authority's recommendation in the Southampton to London Pipeline Order 2020, with which the Secretary of State agreed:

8.7.14. The ExA accepts the width of the Order Limits would be necessary in order to enable the Applicant to have the flexibility over the final alignment of the Proposed Pipeline. However, in order to minimise the CA of land the Applicant proposes to use TP powers to enter the land and undertake construction. Permanent rights to access and maintain the development would only be required for a 6.3m strip which consist of the 3.3m width of the Proposed Pipeline plus a 3m easement strip either side. The Applicant would only exercise the CA rights on completion of construction of the project i.e. when the precise pipeline alignment and the strip over which rights would be required is known [Para 5.1.3, AS010(a)].

For example, the Examining Authority's Recommendation in the Net Zero Teesside Order 2023, with which the Secretary of State agreed:

"Article 31 would permit the Applicants to take TP of any other part of the Order land where they have not yet exercised powers of CA. This would allow them to initially take TP of the whole width of corridors required...For each of these, the dDCO includes the powers to acquire new rights in order to construct, maintain and operate the relevant apparatus. Once the Applicants have carried out detailed surveys and installed the relevant apparatus, the Applicants could then acquire new rights within a narrower strip in which permanent rights are required. This phased approach to occupation and acquisition allows the permanent rights corridor to be defined after construction, and to be only that which is necessary for the operation, maintenance and protection of the apparatus."

The ExA concluded at para 8.52.3: "In considering whether there is a compelling case in the public interest, we are satisfied that the Applicants have endeavoured to minimise the impact that CA would have on those Aps who would be affected. Throughout the Examination the Applicants have made efforts to reduce amount of the Order land and hence limit the use of CA powers necessary to deliver the Proposed Development, and through the use of TP powers, to minimise both land-take and the extent of rights and interests to be acquired...The objections raised do not dissuade us from the conclusion that there are no alternatives to the CA powers sought which ought to be preferred...We have therefore concluded that there is a compelling case in the public interest to acquire each of the plots listed in the BoR, and the public benefit derived from the CA outweighs the private loss that would be suffered by those whose land is affected."

The proposed restriction on compulsory acquisition powers is also unprecedented for linear infrastructure projects which are consented by other means, such as Transport and Works Act Orders, Electricity Act 1989 Compulsory Purchase Orders, and hybrid bills (e.g. the High Speed Rail (London-West Midlands) Act 2017). Commitments regarding minimising land acquisition and the sale of surplus land are not governed by the operative powers in the order or Act but are instead dealt with by other binding means. In the case of HS2 for example, the Secretary of State has given binding commitments to affected landowners in Information Papers (which can be found Appendix C). These are equivalent to the control documents such as the CoCP and CMS which are secured by the **Draft Development Consent Order [REP3-003]**.

#### **Proposed Alternative Approach**

In light of the above, the Applicant is unable to provide drafting even on a without prejudice basis for insertion into Article 25. Instead, the Applicant proposes to expand and clarify the role of the ALO, as explained in response to Action 1 above. The Applicant also proposes to add text to the Construction Method Statement at Deadline 5 which confirms that:



- The Applicant will exercise its compulsory acquisition powers so as to acquire no greater land, or acquire new rights or impose restrictive covenants over no greater land, than appears to the Applicant to be reasonably required following the detailed design of the project;
- In the event that more land is acquired permanently than necessary, the Applicant will have regard to the provisions for the disposal of surplus land in the Crichel Down Rules;
- In the event that new rights are acquired or restrictive covenants are imposed over more land than is necessary, the Applicant will use
  reasonable endeavours to liaise with the landowner to seek to agree an appropriate mechanism for the variation and or release of the surplus
  new rights or restrictive covenants. In doing so the Applicant shall have regard to the following guiding principles:
  - the requirement to maintain and protect the safe, economic and efficient operation of the authorised development;
  - the need to comply with planning and environmental requirements in relation to the land;
  - the terms of any existing agreements with or commitments to landowners;
  - the purposes and terms of the surplus rights or restrictive covenants, and the means by which the compulsory acquisition powers have been exercised and/or the rights or restrictive covenants have been acquired.

These commitments accord with the principles in HS2's Land Acquisition Policy C3, and its policy for the disposal of surplus land (appended at Appendix D). This approach is also in accordance with the approach taken in other infrastructure projects to provide an appropriate commitment to limit the extent of land over which Compulsory Acquisition powers are exercised and/or to release surplus rights. These proposed commitments to landowners will be in addition to those already secured by Requirements 22, 23 and 24 of the **Draft Development Consent Order [REP3-003]**.

### Agenda Item 10 - Site Specific Representations from Affected Persons

- 7 The Applicant to respond to Mr Baird's outstanding questions and concerns.
- The Applicant has responded to the questions and concerns as set out in the letter addressed to Mr Baird from Carter Jonas attached at Appendix E.
- Michelgrove Park plots 11/1, 11/2, 11/3 and 11/4 and Sullington Hill Plots 19/1 and 19/2 Applicant to provide a note to explain and justify the extent of the land required and to demonstrate the area can't be reduced based on the limits of deviation of the HDD pits. In addition, the Applicant to clarify why the area to the west on plot 19/2 is required.

The Applicant has previously provided detailed responses regarding the need for the wider extent of proposed DCO Order Limits in the **Deadline 2**Submission – 8.42 Category 8: Examination Documents – Applicant's Response to Action Points Arising From Issue Specific Hearing 1
[REP2-018] under AP 26 and LR1.24 in Applicant's Response to Examining Authority's Written Questions (ExQ1) [REP3-051].

The Order Limits and Order Land are necessarily wider in these locations because surveys, investigations, access and rights for the construction, operation, maintenance and protection of the Proposed Development may need to be exercised anywhere within those limits.

Cable Rights and Cable Restrictive Covenants over the wider area at both locations are required by the Applicant as the final cable alignment is yet to be determined due to potential geotechnical risks. Land rights are required over the area to undertake intrusive and non-intrusive site investigation works at both locations to inform the detailed design and selection of the final cable alignment.

### **Ground Investigation Requirements**

The aim of ground investigations at the locations is to:

- Verify the geological strata along the horizontal directional drilling (HDD) routes to enable the production of a geological 3D model of the ground;
- Accurately identify the location, thickness, nature (nodular or tabular), dimensions and prevalence of flint layers ("bands") within the chalk;
- Obtain core samples for logging of fractures and rock quality measurements;
- Assess the permeability of the chalk through in situ permeability testing;
- Obtain samples for laboratory testing that will include measurement of strength, density, thermal resistivity, and abrasivity testing;
- Identify potential large fractures such as fault-zones or solution features on or near the routes that could result in loss of drilling fluids.



The undertaking of the ground investigations is essential in order to inform detailed alignment design (including required alignment angles), detailed construction method determination (e.g. top vs. bottom drill-rig positioning, drill-fluid and fluid management requirements, drill bit selection), overall electrical design and cable rating requirements, HDD construction risk assessments and mitigation strategies.

The ground Investigation (GI) will be undertaken at selected locations across the wider order limits, to provide the Applicant with a complete picture of the ground conditions at the crossing locations. It is not practical to restrict the GI survey to a sub-section of the land at the crossing locations, as an understanding of geotechnical properties across the crossing area is required in order to select the optimal crossing alignment. Furthermore, it is a requirement to construct HDD drills at least 10m from the nearest borehole undertaken for GI, as boreholes (which will be backfilled) could act as pathways for drill fluids during HDD drilling if intersected.

Following intrusive geotechnical site investigation, the Applicant may use geophysical survey methods, such as Seismic Reflective Tomography (SRT) or Electrical Resistivity Tomography (ERT) to gain further information of ground conditions in combination with the factual information from intrusive surveys.

If the Applicant was restricted in its ability to undertake GI in the wider area to gain the required factual geotechnical information – it may result in the Applicant being unable to deliver the onshore export cable construction.

### **Site Access Requirements**

It is required to retain access across the alignment as much as possible to be able to transfer construction equipment and materials, in line with environmental commitments (such as commitment C-216 in the **Commitments Register [REP3-049]**). This is especially relevant for Michelgrove Park, where there is a network of existing forestry tracks including in the "central area". It is also necessary to retain access rights to allow pedestrian access to monitor the drill progress from the surface during the HDD construction.

At Sullington Hill, the management of the South Downs Way as a major public right of way (PRoW) will require consideration and order limit flexibility in order to be able to implement a convenient crossing for public users of the National Park.

#### Specific Construction Challenges at Michelgrove Park and Sullington Hill

Michelgrove Park and Sullington Hill are both located in the Upper White Chalk geological units. Chalk is a type of sedimentary carbonate rock that can present a spectrum of geotechnical properties – such as variable rock strength typically ranging from 3 – 45 Mpa (Unconfined Compressive Strength) and porosity. Bands of flint rock are expected to be embedded in the chalk at the crossing locations, which possess very high mineral hardness and high rock strength characteristics, in contrast with the softer chalk. These aspects need to be managed in design with regards to cutting tool selection and drill fluid design and management.

Chalk has a higher thermal resistance compared to rocks and minerals with a higher silicate content, which is a consideration for thermal rating requirements of the cable. Associated cable specification and design requirements in turn feed into requirements for HDD ducting and bore sizing, bending radii across the alignment and required cable strength for cable pull-in. Detailed thermal resistivity testing during GI will provide the Applicant to consider these aspects during detailed design of the trenchless crossing.

Carbonate rocks, such as chalk can also form "karstic" solution features. These can present unstable zones which should be avoided by the drill alignment. Solution features can present pathways for drill fluids to be lost into the ground. The identification of solution features through boreholes and geophysical surveys during GI will provide the required design inputs to mitigate this risk by avoiding any intersection of such solution features. These surveys will require access to the wider proposed DCO Order Limits at both crossing locations.

The aspects above illustrate the need to retain the flexibility of wider order limits as essential in order to deliver the Proposed Development. If the Applicant was restricted in its ability to investigate and select an alignment through careful consideration of all the obtained data at Michelgrove Park and Sullington Hill, it may result in the Applicant being unable to deliver the onshore export cable construction.

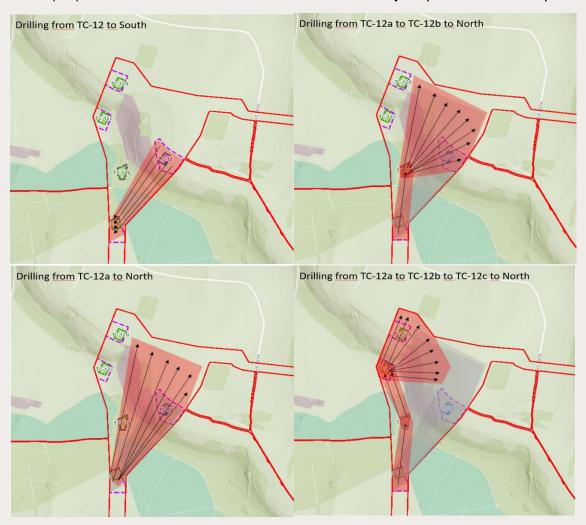


### Detailed response with regards to the potential crossing alignments at Michelgrove Park

The Applicant notes that the wider proposed DCO Order Limits are required as already clarified in the paragraphs above, specifically for GI and access requirements.

With regards to the crossing alignments that may be constructed, it must be noted that at there are five potential compound locations (TC-12 to TC-12d) at Michelgrove Park within their Limits of Deviation (LOD). As already clarified in the ISH2 (May 2024), the Applicant will undertake the crossing from a trenchless crossing compound ("entry pit") sited anywhere within an area marked as LOD to anywhere on the other side of the crossing within the order limits.

The potential crossing directions from each LOD / entry pit to the other side of the obstacle are illustrated below. This illustration is not indicative of construction space requirements and only presents the design flexibility position as per the DCO Application. The preferred crossing alignments will seek to cross with the shortest possible length and at an orthogonal angle. However, the ability to implement this design principle relies on ground investigation data, detailed assessment during design and construction method considerations. The direction of the arrows intends to clarify the positioning of the trenchless crossing rig and drill direction. It can be seen from the figures below that there aren't any areas of land within these wider proposed DCO Order Limits that are not currently required for the Proposed Development.







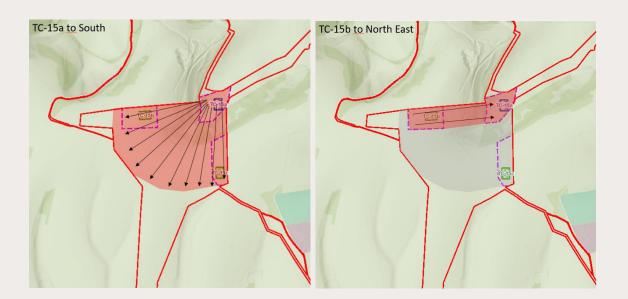
### Detailed response with regards to the potential crossing alignments at Sullington Hill

The Applicant notes that the wider proposed DCO Order Limits are required as already clarified in the paragraphs above, specifically for GI and access requirements.

With regards to the crossing alignments that may be constructed, it must be noted that at there are three potential compound locations (TC-15a to TC-15c) at Sullington Hill within their Limits of Deviation (LOD). As already clarified in the Issue Specific Hearing 2 (May 2024), the Applicant will undertake the crossing from a trenchless crossing compound sited anywhere within an area marked as LOD to anywhere on the other side of the crossing within the order limits.

The potential crossing directions from each LOD / entry pit to the other side of the obstacle are illustrated below. This illustration is not indicative of construction space requirements and only presents the design flexibility position as per the DCO Application. The preferred crossing alignments will seek to cross with the shortest possible length and at an orthogonal angle. However, the ability to implement this design principle relies on ground investigation data, detailed assessment during design and construction method considerations. The direction of the arrows intends to clarify the positioning of the trenchless crossing rig and drill direction. It can be seen from the figures below that there aren't any areas of land within these wider proposed DCO Order Limits that are not currently required for the Proposed Development.







In addition, the Applicant to clarify why the area to the west on plot 19/2 is required.

### Clarification for requirement to include western extension of plot 19/2

The area on the western side of plot 19/2 at Sullington Hill would be used if the crossing was constructed from TC-15a directly to the west where there is not enough room to align the ducts for stringing to the South (noting for this to also avoid crossing the South Downs Way). The area would be used for duct stringing space only, required for duct-installation following reaming. An upcoming update to the **Onshore Works Plans [PEPD-005]** will clarify the Works Area to be changed from Works No 9 to Works No 12 in this area at Sullington Hill and the **Land Plans Onshore [PEPD-003]** and **Draft Development Consent Order [REP3-003]** will be updated to alter the powers sought over this land from permanent rights to temporary possession only (i.e. Blue land to Green land on the **Land Plans Onshore [PEPD-003]**).]



9 in section 24.9.47 of Volume 2 - Chapter Statement [APP-065].

The Applicant to provide an explanation of Within the Environmental Statement (ES) (Chapter 24: Ground conditions, Volume 2 of the ES [APP-065]) the volume of material that could be the volume of sand that could be sterilised sterilised by the Proposed Development within the Minerals Safeguarding Area (MSA) for sand was identified. This volume was calculated at 1,160,000m<sup>3</sup>. The details of the calculation are provided below but can be summarised as a consideration of the area covered by the proposed DCO 4 Ground Conditions of the Environmental Order Limits within the MSA, minus land which was considered to be unsuitable for minerals extraction calculation. The thickness of the sand resource in this area is then used to identify the volume of sand. The calculation was a worst-case scenario assessment, based on the information available at the time of the assessment.

> However, it should be noted that this calculation was produced only for the purposes of identifying significance in EIA terms and has not been calculated using the standards which would be required for the reporting of Mineral Resources as per the industry standards of CRIRSCO (Committee for Mineral Reserves International Reporting Standards) member organisations, which apply for Mineral Resources and Mineral Reserve estimation and reporting. It must also be noted that the usage of the term "Mineral Resource" in the context of the MSA is also not conform with the requirements of the industry standard. The text with Chapter 24: Ground conditions, Volume 2 of the ES [APP-065] clearly states that measurements used are approximate values, and some assumptions have been used such as there being no angle of slope considerations used for minerals extraction here and the full construction cable corridor (assumed to be 40m) being sterilised during the operational phase (rather than the narrower easement corridor, which is assumed to be 20m).

> It is also relevant to note that the MSA does not provide any assumption in favour of minerals extraction (as noted in the West Sussex Joint Minerals Local Plan) and the sand resource has not been demonstrated to have reasonable prospects for eventual extraction under technical, economic and environmental considerations. Care must therefore be taken in using the 1,160,000m<sup>3</sup> volume for any other purpose than the consideration of EIA significance.

> The basis for the calculation was originally provided within Chapter 24: Ground conditions, Volume 2 of the ES [APP-065], paragraphs 24.9.2 to 24.9.9. That text has been used to form the basis of this response, with Figure 1 Minerals Calculations Information submitted to provide clarification of the calculation process.

> The sand calculations have been based around the extent of the Minerals Safeguarding Area (MSA) for sand from the West Sussex Joint Minerals Local Plan Policy M9 (shown as the Sand Gravel area in Figure 1 Minerals Calculations Information). This approach accords with local planning policy, which states that:

- "(a) Existing minerals extraction sites will be safeguarded against non-mineral development that prejudices their ability to supply minerals in the manner associated with the permitted activities.
- (b) Soft sand (including potential silica sand), sharp sand and gravel, brick-making clay, building stone resources and chalk reserves are safeguarded against sterilisation.
- Proposals for non-mineral development within the Minerals Safeguarded Areas (as shown on maps in Appendix E) will not be permitted unless: (i) Mineral sterilisation will not occur: or
- (ii) it is appropriate and practicable to extract the mineral prior to the development taking place, having regards to the other policies in this Plan; or (iii) the overriding need for the development outweighs the safeguarding of the mineral and it has been demonstrated that prior extraction is not practicable or environmentally feasible."

Rock Common Quarry is the only existing minerals extraction located close to the cable corridor, and the Project would not prejudice the Quarry's ability to supply mineral. Therefore part (a) of Policy M9 has been met.

For Policy M9(b) the supporting text confirms that for sand, the MSA includes all of the sand and gravel mineral resources identified within Appendix E; which is the Folkestone Formation identified by BGS 1:50000 scale geology mapping. No other information has been identified by the Applicant that verifiably evidences other sand resource outside of the MSA. Wiston Estates have made reference to two plots of land (the Wet Pools Compound and land to the south west of the A283) in their Deadline 3 response [REP3-142], Wiston Estates confirm that both of these plots are

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outside of the MSA sand area (the Wet Pools Site is identified on Figure 1 Minerals Calculations Information, but we have not been supplied with the location of the second site). There are also no planning policy allocations or any planning applications where information may be available which may relate to any sites in this area outside of the MSA. The Applicant is only able to undertake an assessment of land within which information is available to show a sand resource may be present which is why neither of these two sites were included in the calculation.

Where the onshore cable corridor passes through the MSA, the corridor will interact with approximately 8.2ha of land within the MSA (the extent of land covered by the proposed DCO Order Limits, within the Sand and Gravel area as shown on Figure 1 Minerals Calculations Information). This area consists of a thin strip of land running mainly alongside the southern side A283.

Approximately 0.8ha of this land is covered by the A283 and has not been included in the volume calculation.

The MSA (the sand and gravel area on Figure 1 Minerals Calculations Information) also extends to the north of the A283 in this area, however much of the MSA on the northern side of the road in this area was the former Windmill Quarry (sand) and landfill site, and the former Rough Landfill site. It can reasonably be expected that either all of the soft sand resource in this area has been previously extracted, or that any remaining resource is now sterilised by the landfilling operations, and therefore there is no viable resource remaining in this area. No information is publicly available to indicate otherwise. This leaves a small area of land where the cable corridor passes through the MSA (the Northern Area on Figure 1 Minerals Calculations Information), to the east of the former guarry / landfill, which is also constrained by the presence of an existing business, the Sussex Timber Company and existing woodland. This Northern Area (1ha) is considered too small to be viable for extraction and has not been included in the volume calculation.

To the south of the A283, Figure 1 Minerals Calculations Information shows both the Western Area and the eastern Area, Within the Western Area, the A283 to the north provides an existing constraint on some of this land with other sand quarries in the area utilising an approximate 35 metre wide buffer from roads of this type. A woodland area to the western boundary of this land would also provide a constraint to extraction. These constraints would see the land available in the Western Area, become a narrow band measuring between 65-125m wide and 470m in length (approximate figures). Due to these constraints and its location at the edge of the MSA, this is considered unlikely to be a sufficiently large plot of land to allow a viable extraction site to be developed. The proposed DCO Order Limits through this area is therefore not considered to sterilise sand directly, or to create an area of severance between the onshore cable corridor and the A283. The Western Area (1.8ha within the cable corridor) has therefore not been included within the volume calculations.

In the Eastern Area (Figure 1 Minerals Calculations Information) an area of land of approximately 4.5ha is covered by the proposed DCO Order Limits. If minerals extraction takes place in this location, there will need to be a buffer from the adjacent highway where minerals extraction will not take place to protect the highway. In relation to existing quarries in the nearby area, similar buffers are at least 35m wide. Due to this highways buffer, and the proximity to the buildings at Lower Chancton Farm (including Listed Buildings and residential properties) and the Sussex Timber company, some of the MSA in this area is already sterilised. The construction cable corridor will be approximately 40m wide and depending on the exact configuration of the onshore cable route within the proposed DCO Order Limits, a worst-case scenario of 2.9ha of land will therefore be sterilised during construction of the Proposed Development. This 2.9ha area of land has therefore been included within the volume calculation.

The land considerations therefore identify an area of 2.9ha for inclusion in the volume calculation (shown by the green Eastern Area in Figure 1 Minerals Calculations Information).

Information from the current planning application at Rock Common Quarry indicates that there is a sand and gravel seam of up to 40m thick at the quarry. Historic borehole records held by the BGS indicate sand and gravel deposits of at least 33m in the Lower Chancton Farm area (Borehole reference TQ11SW10, from BGS Geoindex Onshore website, accessed 23 May 2024). This resource has not been assessed to check economic viability, but if it is assumed it was viable and a similar 40m thick seam is available in this land, then a worst-case scenario of 1,160,000m<sup>3</sup> of sand (2.9ha x 40m thickness of sand) could be sterilised during the construction and operation of the Proposed Development. A 40m thick seam also



allows all construction works in the in the construction corridor to be covered by the calculations, whether shallow cable laying, or trenchless crossing excavations at deeper depths.

The Applicant to provide an explanation and justification of the cable route with respect to mineral sterilisation including an evaluation of alternative routes that would minimise mineral sterilisation in response to representation from the Wiston Estate.

The impact on minerals and the potential for mineral sterilisation is one of the wide range of considerations for reviewing the merits of alternative routes. The interdisciplinary evaluation of the selected onshore cable route against various alternatives found it to be the most preferable when weighing up technical engineering, environmental impact (which included minerals), land interest and cost implications in the round.

The Applicant acknowledges that there is mineral sterilisation on the selected cable route, the worst-case assessment of this is presented in the Environmental Statement (ES). The crossing of the Minerals Safeguarding Area (MSA) is unavoidable in order to connect the Proposed Development into the existing National Grid Bolney substation.

The information provided in response to Action Point 9, shows how sand sterilisation has been calculated for the proposed on shore cable route. The Wiston Estates have provided an alternative cable route (the Blue Route) and also provided an amendment to this (Blue Route D3) within their Deadline 3 response [REP3-142]. The same methodology used for the calculation in Action Point 9, and to determine EIA significance, has been applied to these alternatives.

The Blue Route passes through the MSA in a south-west to north-east direction, passing between Bushovel Farm and Model Cottages / Wiston Village Hall. The Blue Route interacts with 10.8ha of the MSA in this location. No planning policy or planning application information is available to indicate there are sand resources outside of the MSA in this area. There will be a buffer zone adjacent to the A283 where sand extraction could not take place (measured at 35m wide). The Blue Route is located with buffer zones around nearby properties, although there is an area of ancient woodland adjacent to the Blue Route which would cause some constraint to sand extraction. Up to 9ha of land could therefore be available for sand extraction in this area.

The depth of sand in this area is difficult to quantify. There are no British Geological Society (BGS) borehole records within the Blue Route in this location, with information to the west indicating a thickness of sand of up to 40m could be available. To the east, BGS borehole records and planning policy information for Hams Farm show varying thicknesses of between 5m and 32m. The volumes of sand within the Blue Route area could therefore vary anywhere from 450,000m³ to 3,600,000m³.

The impact on sand from the Blue Route D3 is also difficult to quantify, both due to the borehole data issue noted for the Blue Route, and that the option runs close to an existing gas pipeline and area of ancient woodland. Identifying how the cable would pass through this area without impacting on either of these features is uncertain. However, it is also possible that these features would already sterilise the sand in this area. Using an assumption that it would be possible for the cable construction to utilise an open trench as it enters the MSA in the south and then a trenchless crossing (and associated compound) is needed to pass underneath the ancient woodland and A283, a land area of around 1ha could be affected. Thicknesses of sand in this area of between 5m and 40m would provide volumes of between 50,000m³ and 400,000m³. If this sand was already sterilised, then no additional sterilisation would occur from Blue Route D3. However, sterilisation of volumes between 50,000m³ and 400,000m³ would be Significant in EIA terms, the same as for the proposed cable route.

A direct comparison of the minerals sterilisation arising from the proposed DCO Order Limits, compared to the Blue Route or Blue Route D3 is therefore difficult to make due to the lack of geological data available on the Blue Route options. Using the EIA methodology, the Applicant has calculated that during the construction and operation and maintenance phases of the Proposed Development the proposed DCO Order Limits could sterilise up to 2.9ha of land and 1,160,000m³ of sand, which is considered significant in EIA terms. During the same phases, the Blue Route would sterilise 9ha of land and between 450,000m³ and 3,600,000m³, which would also be significant in EIA terms. The Blue Route D3 would interact with around 1ha of land during these phases, for which the sand could already be sterilised (not significant in EIA terms) or if the sand is not already sterilised, the route could sterilise between 50,000m³ and 400,000m³ (significant in EIA) terms.

Interdisciplinary assessment of the Blue Route and Blue D3 draw the same conclusions as they largely follow the same path. In summary neither of the routes are accepted by the Applicant in favour of the selected route, the primary reasons are twofold: terrestrial ecology (specifically the



PINS ref	Action points arising from Compulsory Acquisition Hearing 1	Applicant's response
		mitigation hierarchy in terms of interaction with ancient woodland) and higher technical engineering risks. Both these matters have already been set out by the Applicant in Deadline 2 Submission – 8.51 Category 8: Examination Documents – Applicant's Response to Affected Parties' [REP2-028] under point 2.28.12 and further information has been provided at Deadline 4 in the Applicant's Response to issues raised at Deadline 3. Other environmental considerations played further into the decision in addition to these lead reasons.
11	Applicant to provide a note comparing costs of offshore and onshore cable routes.	Ninfield  There is significant construction cost difference between the construction of onshore and offshore export cables. Offshore cable installation involves the cost of survey works, pre-installation route clearance, cable laying vessel, cable burial and installation of cable protection. The charter of these vessels incurs significant cost, and with a longer offshore cable route the charter period increases.
		The grid connection at the existing National Grid Bolney substation requires an offshore cable route of circa 25km and onshore cable route of circa 39km. Estimating possible routing options for the connection at Ninfield substation, the shortest onshore route is circa 8km which requires a 65km offshore route. These lengths are estimated as a lowest distance, and do not take into account the need for any route diversions required to account for the seabed conditions offshore, potential locations of an onshore substation near Ninfield or the likely need to avoid sensitive areas onshore.
		The cost figures of Rampion 1 demonstrate the increased cost of constructing an export cable that is predominantly in the offshore environment. The cost of the Rampion 1 offshore cables were approximately 2.5 times the cost per km of onshore cables. An increased length of offshore cable corridor will therefore outweigh any potential savings of shorter onshore cable routing.
		Indicative cost/km for one circuit (Rampion 1)  Onshore Cable, £0.7m  Offshore Cable, £1.7m
		The cost estimate for a Ninfield grid connection presented in Section 3.3 in <b>Chapter 3: Alternatives, Volume 2</b> of the Environmental Statement <b>[APP-044]</b> considers the cost difference between offshore and onshore cable construction, however this figure also includes other cost aspects related to the grid connection at Ninfield.
12	Applicant to provide a copy of the correspondence from National Grid ruling out Ninfield as a potential grid connection point for Rampion 2.	There is no correspondence from National Grid naming Ninfield as an unfeasible connection option. The Applicant noted during CAH1 that the National Grid Connection Infrastructure Options Notification (CION) process considered the potential grid connection location for Rampion 2. Ninfield is not included as a potential option within that process which was run in parallel to the Applicant's own optioneering process. National Grid's CION documents are commercially sensitive and therefore cannot be submitted into the Examination and made public. However, the Applicant has summarised the options within the CION in Chapter 3: Alternatives, Volume 2 of the Environmental Statement [APP-044] in Section 3.3 based on the National Grid feasibility study into sites that could provide the connection electrical capacity required – this did not include Ninfield and it was therefore ruled out at an early stage of optioneering. As summarised in 3.3.26 to 3.3.30, Bolney was found to best meet the National Grid Electricity Systems Operator's (ESO) obligation to provide an economic and efficient connection. National Grid has confirmed that they are aligned with the process described in their response to Written Question AL1.3 in National Grid's Response to Written Questions ExQ1 [REP3-077].
13	Applicant to provide a written explanation and justification for the proposed route across Mr Dickson's land (College wood Farm) and why Mr Dickson's suggested route would not viable.	The onshore cable route through College Wood Farm runs largely east to west through the landholding. The corridor will facilitate the installation of the cable from Guessgate Farm in the west to the trenchless crossing at Calcot Wood where it runs north of Spithandle lane towards Oakendene. The cable routeing has sought to minimise land take and cable length through taking a direct line through the landholding, however it has also been adjusted to take account of the following environmental receptors:  - College Wood farmhouse (residential property and listed building)  - Farm buildings and College Wood Farm

Pond

- Presence of hedgerows and trees



The Applicant has considered at least 5 different cable route or construction method alternatives put forward by the Land Interest since 2021 including the proposals included in Written Representation rep 1- 168 as responded to by the Applicant in Deadline 2 Submission – 8.51 Category 8: Examination Documents - Applicant's Response to Affected Parties' [REP2-028]. These alternatives or very similar versions of them have been considered by the Applicant at the consultation stage prior to DCO Application submission.

### Latest Construction Corridor Alignment and HDD Request – April 2024

Construction corridor alignment

The Applicant understands that the most recent and Mr Dickson's preferred request is reflected by the Land Interest's proposed "Alternative 3" Cable construction corridor as submitted with written rep 1-168. This specific alternative proposed corridor is partly overlapping an ancient woodland buffer of 25m. The Land Interest has been informed of the rationale for the buffer, set out for ease of reference below:

"Ancient woodland is noted as an irreplaceable habitat in planning policy Overarching National Planning Policy EN-1 (2011) paragraph 5.3.14 and Overarching National Planning Policy EN-1 (2023) paragraph 5.4.54. This policy considers both ancient semi-natural woodland and plantation woodland on ancient woodland sites to be irreplaceable. This is because of the ancient woodland soils that are present (including seed bank, fungi etc.). Significant weight is therefore attached to this constraint in the balancing process of the BRAG assessments.

Paragraph 4.7.16 within the **Planning Statement [APP-036]**:

'NPS EN-1 (paragraph 5.3.13) states that "The IPC should not grant development consent for any development that would result in its loss or deterioration unless the benefits (including need) of the development, in that location outweigh the loss of the woodland habitat." Additionally, "Where such trees would be affected by development proposals the applicant should set out proposals for their conservation or, where their loss is unavoidable, the reasons why." Draft NPS EN1 (paragraph 5.4.32) states that "Applicants should include measures to mitigate the direct and indirect effects of development on ancient woodland, veteran trees or other irreplaceable habitats during both construction and operational phase." Paragraph 5.4.54 states that "The Secretary of State should not grant development consent for any development that would result in the loss or deterioration of any irreplaceable habitats, including ancient woodland, and ancient or veteran trees unless there are wholly exceptional reasons and a suitable compensation strategy exists."

The commitment (C-216 in the Commitments Register [REP3-049], updated at Deadline 4) to the use of a 25m buffer zone for ancient woodland (as opposed to the 15m standard) is to provide comfort that all indirect effects can be managed effectively. These indirect effects are potentially associated with dust, drainage, light and noise. All of these elements can be controlled effectively within the working area in the majority of situations. Commitment C-216 is included in the Outline Code of Construction Practice [REP3-025] and secured via Requirement 22 within the Draft **Development Consent Order [REP3-003]** (both updated at Deadline 4).

This is in line with the standing advice on ancient woodland from Natural England and the Forestry Commission (2022) which states:

'For ancient woodlands, the proposal should have a buffer zone of at least 15 metres from the boundary of the woodland to avoid root damage (known as the root protection area). Where assessment shows other impacts are likely to extend beyond this distance, the proposal is likely to need a larger buffer zone. For example, the effect of air pollution from development that results in a significant increase in traffic.

For ancient or veteran trees (including those on the woodland boundary), the buffer zone should be at least 15 times larger than the diameter of the tree. The buffer zone should be 5 metres from the edge of the tree's canopy if that area is larger than 15 times the tree's diameter. This will create a minimum root protection area.

In addition, Applicant to provide a note on: the length of time construction work would last on Mr Dickson's land;

the length of time Mr Dickson would have to operate crossing points to access land severed by the cable corridor works and

the length of time fencing would be kept in place around the cable corridor on Mr Dickson's land.



Where assessment shows other impacts are likely to extend beyond this distance, the proposal is likely to need a larger buffer zone'.

The Applicant notes that the Forestry Commission have welcomed the principle of using a bigger buffer than the minimum quoted in the Standing Advice (25m instead of 15m) in their response to the Examining Authority's First Written Question TE 1.30 [REP3-103]. With respect to the management of ancient wood buffers Natural England in their Relevant Representation (Appendix J) [RR-265] refer the Applicant to the standing advice on ancient woodland from Natural England and the Forestry Commission (2022) as outlined above" (cited from Applicant's Comments on Deadline 3 Submissions (Document reference 8.66) (submitted at Deadline 4).

The proposed Alternative 3 involves additional tree and hedge crossings and additional unwarranted trenchless crossings. A very similar alternative construction route was put forward previously by the Land Interest's agent at the end of 2022 and early 2023 which partly adjoined and then ran 15m from the northern field boundaries. This option was responded to in April 2023. The Applicant concluded the following reasons for not progressing the proposed alternative:

- We would encounter additional hedgerows and would cross additional treelines.
- Where the property boundaries comprise of ancient woodland a buffer of 25m is
  required to be met and it is noted that much of the woodland to the north is designated ancient woodland and would be subject to associated
  protective planning policies. These areas are marked on the enclosed plan
- The project is required to use a cable routeing that is economic and efficient.

Therefore, the additional cable length and land take required by the routeing of the cable northward along the field boundary would need to be justified on environmental or engineering grounds (which the Applicant does not believe it to be).

These reasons are recorded in the letter from the Applicant dated 14/4/2023 (REP-028 APP G). An additional contributing reason to the decision was (and continues to be) the increased likelihood of encountering surface water at the Land Interest's proposed alignment. These reasons are equally applicable to the "Alternative 3" proposal put forward in Written Representation rep 1- 168.

It is also reasonable and appropriate for the Applicant to take into account the cost impacts of proposed alternative options. Under the regulatory regime for the construction and operation of offshore transmission assets Ofgem's role is to ensure the development of an economic and efficient national network in order to ensure that end consumers do not pay excessive bills. This requirement passes through to the Applicant (see further details in OFGEM's OFTO guidance for Cost Estimates 2022).

#### Trenchless crossing

With regard to the request for a trenchless crossing of the driveway at College Wood Farm (which the Applicant understands forms part of the "Alternative 3" proposal together with further trenchless crossings), the Applicant notes that a trenchless crossing compound and exit pit at College Wood farm would result in:

- a greater land take / greater grazing loss for Mr Dickson as the footprint of trenchless crossing compound is larger than the required land for the 40m construction corridor;
- greater potential noise and disturbance from the trenchless crossing works on the nearest properties to the north of College Wood Farm and College Wood farm:
- Requirement for 24/7 working hours for the completion of the trenchless crossing;
- greater number of vehicles and materials needing to access College Wood farm;
- longer programme of works due to trenchless crossing works as detailed further below; and
- greater potential for disturbance to cattle as a result of the above.



As set out in **Deadline 2 Submission – 8.51 Category 8: Examination Documents – Applicant's Response to Affected Parties' [REP2-028]** in response to the Land Interest's written representations on the basis of open cut trenching, the Applicant will provide uninterrupted access along the private access track throughout the duration of the construction phase. When the cables are installed through the private access track, an alternative access route via a short diversion will be provided (through the Construction Corridor) of suitable material (i.e. bog matting) to ensure uninterrupted access is maintained for farm vehicles, HGVs, and for emergency vehicles. The relevant principles around Private Means of Access (PMA) as detailed in section 5.7.10 in the **Outline Code of Construction Practice [REP3-025]** apply to this.

On the basis of the above, the Applicant would anticipate there to be greater disruption to farming activities and nearby residential properties from the adoption of the trenchless crossings in Alternative 3 than from the trenched construction methods.

#### The approach the Applicant took to weighing up the impacts on a multi-disciplinary basis at College Wood Farm

The Applicant has followed an iterative design process, refining the proposals over the course of the development. The approach to design evolution is outlined in paragraphs 3.1.5 to 3.1.15 within **Chapter 3: Alternatives, Volume 2** of the Environmental Statement (ES) **[APP-044]**. The impacts on the Affected Person's use of the land which are considered to be temporary and mitigatable to a significant extent have been balanced with the environmental impacts based on national policy for the protection of ancient woodland and trees, increased surface water risk and engineering and cost impacts. An overall decision has been made on its feasibility and the appropriateness of making the change. Further impacts from a trenchless crossing on the amenity of the nearby property to the north would require to be fully assessed but it is noted that this third party owned property is less than 100m from where the crossing would be located on College Wood Drive.

#### **Construction Activity Durations**

The length of the cable corridor over the Land Interest's land is approximately 1,150m and will be constructed by Open Cut Trenching methods. Site preparation works may need to be scheduled in the preceding year, depending on seasonal restriction for these activities, but would not be considered part of the main construction activities or present significant disruption to landowners (examples include netting of hedges).

The following construction activities and indicative durations are required on the Land Interest's land:

- Clearing / Preliminary Works estimated 1 week;
- Haul road construction estimated 2 weeks;
- Trenching / Duct-installation & backfill and re-instatement estimated 6 weeks;
- Cable pull-in and jointing works at joint bays, the siting of which depends on the final cable specifications estimated 2 weeks; and
- Haul road removal and final reinstatement estimated 4 weeks.

The timing and sequencing of these activities is subject to detailed construction scheduling that will be completed during detailed design once a principal contractor has been appointed. There will be periods of very low activity on the Land Interest's land between the main activities due to specialised crews and equipment sequencing their work at sites across the cable route.

It must be noted that the haul road through the Land Interest's land will be used to access the cable construction corridor to the East. The vast majority of equipment, materials and personnel will be transported in both directions along the haul road to complete similar construction activities up to and including the trenchless crossing (TC-20).

Indicatively it is anticipated that all activities on the Land Interest's land (including those to the East which use the haul road) can be completed within approximately 18 months of commencement.

### **Construction Site Fencing and Crossing Points**



It is necessary to fence off the construction site during the construction works in order to control access to the site, ensure that construction activities are within the agreed limits and to protect the public from risks. During the main construction activities, the onshore cable corridor (which includes the haul road) will be fenced off either side by appropriate fencing.

Appropriate crossing points in farm fields will be agreed and implemented to enable access to either side of the onshore cable corridor with livestock or agricultural equipment.

Type of fencing used for the construction of the Land Interest's land will be discussed with the landowner by the Agricultural Liaison Officer (ALO) to ensure it meets the requirement of the landowner as per section 2.6 in the Outline Code of Construction Practice [REP3-025].

Fencing would be erected during the Enabling / Preliminary Works and would be removed following the completion of site reinstatement and successful preliminary cable testing at the joint bays. For regular circumstances, the estimated maximum time that the fencing would remain in place and crossing points would need to be operated at College Wood Farm therefore is approximately 18 months as detailed above. Access rights however would need to be retained over the entire duration of the construction period (approximately 3 years) for testing of the entire cable route. The Applicant will endeavour to keep the duration of fencing and disruption to landowners to the necessary minimum. Therefore, whilst Mr Dickson referred to a position of 8 years for fencing off, this is not the case, and it is more likely to be in the order of 18 months.

### Construction and fencing activities and timescales if there were additional HDDs over Mr Dickson's Land as proposed in his Alternative 3

Construction durations for trenchless crossings are significantly longer than those for open-cut trenching methods and noise impact can be greater. As an example of a trenchless crossing via HDD for a crossing distance of circa 200m the following estimated timelines can be defined:

- Enabling works construction site preparation (including soil stripping and storage) and compound set-up 2 weeks;
- HDD drilling operations (24-hour working) 2 weeks (strongly dependent on ground conditions);
- Duct fabrication and installation (in parallel with drilling operations) 2 weeks;
- HDD equipment de-mobilisation 1 week; and
- Compound site re-instatement 2 weeks.

A reasonable timeline for 2-3 months per HDD crossing of this length could be assumed for four drills (one per circuit). This compares with a time of 1-2 weeks for construction of open-cut-trench cable corridor over an equal distance, including site preparation. Haul road construction would need to be undertaken with either method. Therefore, for short crossings it is the Applicant's view that it is more efficient and less impactful on landowners for to apply open cut trenching methods, as they require significantly less time, even if additional reinstatement works of, for example an access track, are considered.

- The Applicant to justify the route and width of the proposed cable corridor at Sweethill Farm.
- A response to Mr and Mrs Fischel in respect of the justification for the extent of land required at Sweethill Farm is set out in **Deadline 2 Submission** - 8.51 Category 8: Examination Documents - Applicant's Response to Affected Parties' [REP2-028] (2.1) which states: "The final routing is not fixed and will be dependent upon matters such as pre-construction surveys. As explained in the paragraphs in the Statement of Reasons, the Applicant will seek to minimise the extent of permanent rights required by taking temporary possession first of the wider construction corridor and then permanently acquiring the rights required over the narrower area when the location is known. Specific reasons for required design flexibility over the Fischel's Land relate to:
- The land covers a segment of the cable route between two HDD sections as can be seen on Sheet 19 of the Crossing Schedule in Appendix A of the Outline Code of Construction Practice [PEPD033] (extract below). Final siting and extent of each of the trenchless crossings will influence the cable routing of the open cut trench section between.
- -The cable construction works must comply with the stand-off distance to the AWL as defined in Commitment C-216 in the Commitments Register [REP1-015].



• In plot 26/3 the route passes through two mature tree lines and a mature hedge (with some trees). Flexibility is sought to allow the cable to be routed to reduce the impact as much as practicable. To further reduce impact the cable construction width will be reduced as much as practically possible when crossing the tree lines/hedge and therefore greater soil storage areas either side will be required. • For the trenchless crossing of Spithandle lane an area, in addition to the normal corridor working width, is required within plot 26/3 for stringing out of ducting to be pulled into the trenchless crossing. The ducting, once strung, will be equal in length to the trenchless crossing.

Each of these aspects will be considered in the process of further construction design development and informed by onshore site investigation works.

The Applicant welcomes the Land Interest's willingness to discuss matters further and confirms that it will engage further with the Land Interest regarding the refinement of the final land area and appropriate and reasonable mitigation measures during construction of the project to minimise disturbance to the Land Interest.

Crossing Schedule Plan sheet 19 – Doc ref Appendix 4.1: Crossing Schedule, Volume 4 of the Environmental Statement [APP-122].



The cable is required to be routed from Calcott Wood in the south northwards towards Oakendene substation. The proposed onshore cable corridor routeing was selected through this low intensity used land to avoid:

- the re-wilded area to the west previously identified as a constraint and a less preferred area for cable routeing by Mr and Mrs Fischel;
- the equine livery yard fields which form part of Sweethill farm; and
- impacts on nearby dwellings and listed buildings

The Applicant's response to Deadline 2 Submission – 8.51 Category 8: Examination Documents – Applicant's Response to Affected Parties' [REP2-028] 3.4 explains further the rationale for the construction corridor route through the land:

"It is not practical to construct the cable corridor over the Land Interest's property by following existing field boundaries for the following localised reasons: 1) The trenchless entry and exit pits require a stand-off distance from the crossing obstacle (in this case, the B2135 and Spithandle Lane) which will be finally confirmed following site investigation and detailed design. As the cable route must for a connection between the two trenchless crossing segments over the LI's property, it is not practical to route the cable corridor along existing field boundaries. 2) The near rectangular geometry of field boundaries is incompatible with the overall direction of the cable corridor towards the Oakendene SS site and the ability of the cable to make sharp turns."



Please refer to the **Applicant's Comments on Deadline 3 Submissions** (**Document reference 8.66**) – Winkworth Sherwood LLP on behalf of Susie Fischel's Deadline 3 Submission.

National Highways provide comments on the rights sought over plots in its ownership by the Applicant.

Noted. The Applicant will respond as appropriate at Deadline 5.

**16** The Applicant to:

justify the permanent acquisition of plot 34/28;

the need for CA rights over plots 34/25, 34/26 and 34/27

explain the role of the Applicant and National Grid in progressing the proposed connection of Rampion 2 to Bolney Substation and provide an update on the current position.

Permanent rights are sought over plot 34/28 to allow the construction of an extension to the existing NGET substation located at Bolney. The applicant requires the extension to the existing substation to allow the construction of two new "bays" which will in turn allow the applicant to install its electrical infrastructure and connect Rampion 2 and its associated electrical generation onto the national electricity transmission network operated by NGET. A grid offer and associated documents were issued in 2019 to the applicant. As part of the connection offer, NGET has the responsibility to provide a design for the project connection which NGET has confirmed is to comprise of 2 connection bays to the east of the existing National Grid Bolney substation as set out in the Cable and Grid Connection Statement [APP-034]. Whilst it is envisaged that NGET will construct and subsequently own the extension bays, with the Applicant then having appropriate rights for the accommodation of its equipment, this has not been formally documented and therefore the Applicant needs to retain powers in the order to ensure that the extension can be delivered.

Negotiations are ongoing with NGET as to the form of agreements and land rights required to deliver the Proposed Development. The ultimate agreement will need to provide comfort to both parties that there are sufficient rights to allow the applicant's project to connect to the transmission network without restricting NGET's ability to fulfil its obligations as a statutory undertaker.

New rights are sought over plot 34/25 for the creation of a construction access track and temporary construction compound with permanent operational access rights. The two construction elements are required to allow the construction of the Bolney Substation extension bays as part of the project's electricity transmission connection works. Cable rights and cable restrictive covenant is also required in this plot, albeit it was acknowledged in the haring that part of the plot to the north west of the existing substation may not require this right. These rights relate to works shown on **Onshore Works Plan [PEPD-005]** Sheet 34 as Works no. 10, 13 & 19.

New rights are sought over plot 34/26 for cable connection works. The export cables from the applicant's project will enter the plot from the north and then will be required to have a 180-degree radius. NGET is currently progressing the design work for the cable connection into the proposed Bolney extension bays.

New rights are sought over plot 34/27 for boundary planting reinforcement. The mitigation planting is required in this area to limit views of the existing National Grid Bolney substation extension.

The applicant is continuing to pursue a voluntary agreement and believes it will resolve the points raised by NGET in relation to its land before the end of Examination.

Role of NGET and Rampion 2 – existing National Grid Bolney substation extension connection

National Grid Electricity Transmission (NGET) is the statutory undertaker responsible for operating the national electricity transmission network. As such the applicant was provided with a grid connection offer in 2019 stating that NGET would provide a connection at the Bolney Substation to the 400kV network. The connection is subject to ongoing design work by NGET, though the initial details such the number of bays, the cable routeing into the east of the substation and point of connection have been identified. NGET as well as owning the land on which the existing substation is located also owns the surrounding land required for the cable easement and cable connection works as shown on **Onshore Works Plans [PEPD-005]** Sheet 34 as Works no. 10, 13,19 & 20.

The role of the Applicant is to:

provide sufficient technical and programme information to NGET to facilitate the connection and plan its works,



make appropriate payments at the key stages to NGET to progress the connection design and scope of connection works.

The design of the Bolney Extension design by NGET will have a direct influence on the final cable routeing north and east of the point of connection.

### **Position Update**

NGET have been progressing the design for the Bolney Extension on behalf of the applicant and have confirmed the location to the east of Bolney substation for the AIS infrastructure. NGET has now shown the Applicant a working draft 'base design' drawing for the extension area. NGET are expecting to have a finalised design in the last quarter of 2024. Whilst the final design is not yet completed, the Applicant is now able to utilise the known elements to progress interim cable design work for the Proposed Development from the edge of the Bolney extension area to (and including) the Worsley land over which Ancleggan has an option.

The Applicant will continue engaging and progressing the voluntary agreements described above which will result in the avoidance of the need to use CA powers in relation to NGET's interests.

Applicant to provide explanation and justification for the need for plot 7/3.

Plot 7/3 and Plot 7/2 as shown on sheet 7 of the **Onshore Land Plans [PEPD-003]** relate to the construction access A-20 as can be seen on the Construction Traffic Management Plan [REP3-029], which is a light construction and operational access and the area is indicated with Works No 14 on the **Onshore Works Plans [PEPD-005]**. Although no modifications are expected to be required for use by light vehicles during the construction, the Applicant requires rights over these plots as it will be used as a construction access to access cable construction works south of the A27 and there may be need to manage vegetation to ensure sight lines and access widths are maintained. The access is also proposed as an operational access and therefore a package of Construction and Operational Access Rights are sought over this parcel. It is noted that the **Outline Construction Traffic Management Plan [REP3-029]** had incorrectly categorised this access, so this has been corrected in the version provided at Deadline 4

### Agenda Item 11 - Site Specific Issues for the Applicant

- The Applicant to provide justification for the need and / or size of plots on Land Plans [PEPD-003]:
  - Sheet 5, plot 5/3 which widens out to over 100m just before the change in cable corridor direction.
  - Sheet 6, plot 6/3 which continues east from an HDD location on a straight section of cable corridor at over 100m.
  - Sheet 8, plots 8/1, 8/2, 8/3 and 8/4 which are approximately 80m wide on a straight section of cable corridor.
  - Sheet 14, plot 14/1 which widens out to over 125M.

The following requirements for wider proposed DCO Order Limits width and increased flexibility are applicable to the respective land plots:

Sheet 5, plot 5/13 (The Applicant assumes the Examining Authority refers to plot 5/13, not 5/3 which is only a few metres wide for access from the A284)

- There is a 90° change in direction for the cable corridor to run eastwards. The cable and duct have limitations for bending radii that will be determined during detailed construction design. Additional considerations for allowable forces that will be exerted onto the cable during cable pull-in would need to be assessed and will be more severe with "tighter" turns in direction.
- There are existing utility services, including an 11kV underground power cable, telecommunication services and water mains located in this area for which engineering requirements would need to be accommodated by the construction design at the respective crossing points.

Sheet 6, plot 6/3 which continues east from an HDD location on a straight section of cable corridor.

- This area is needed to accommodate:
- The crossing of Poling Street which is to be undertaken via trenchless methods to reduce the impact on the environment and users of Poling Street. Trenchless crossing compound "TC-07" is shown in the Crossing Schedule in Appendix A of the Outline Code of Construction Practice [REP3-025].
- The siting of the haul road across Poling Street which would be designed to avoid existing vegetation and trees along Poling Street and to be constructed at a suitable location for traffic aspects.
- The accommodation of operational access to the permanent cable easement
- Construction and post construction drainage mitigation. The land is in arable use and the Applicant understands there are drainage pipes within the fields. The drainage scheme for the construction works and the reinstatement post construction drainage is likely to require new or repaired drainage infrastructure in the southern part of this proposed DCO Order Limits section.



Sheet 14, plot 14/6 which widens out from approximately 80 to 120m on a straight section of cable corridor.

Sheet 28, plot 28/2 which widens out to over 200m in the vicinity of the disused railway line.

Sheet 31, plots 31/2 and 31/3.

• This area of the works is in close proximity to the recorded location of a Late Bronze Age settlement and medieval field system at The Vinery (Historic Environment Record MWS14193) and an archeological notification area for a Romano-British Settlement, and the site of St. John's Priory and the Preceptory of the Knights Hospitallers, Poling. The area within the proposed DCO Order Limits to the has been identified as one of high archeological potential. The proposed DCO Order Limits will allow for appropriate micro siting should any archeology be identified pre-construction.

### Sheet 8, plots 8/1, 8/2, 8/3 and 8/4

This area of the cable route is located within the Angmering Source Protection Zone 2 (SPZ2) and is potentially karstic. The intersection of a karstic feature by the cable corridor construction could potentially impact the underlying aquifer. Geophysical investigation surveys have been undertaken nearby and used to inform a hydrogeological risk assessment (see Appendix B within Appendix 26.4: Hydrogeological Risk Assessment, Volume 4 of the Environmental Statement [APP-218]). However, commitment C-246 (Commitments Register [REP3-049], updated at Deadline 4) provides for a watching brief and micro-siting of the trenching should a karstic feature be identified during trenching, and further definition of such a feature if required could be achieved by additional geophysical investigation within the proposed DCO Order Limits.

#### Sheet 14, plot 14/1

- The applicant requires additional space to negotiate construction access requirements across a steep segment of topography.
- Additionally, the proposed DCO Order Limits are drawn to include an existing field track that could be used to provide access along the cable easement during the operation and maintenance phase of the Proposed Development.

### Sheet 14, plot 14/6

- This part of the onshore cable corridor has a high potential for archaeology and heritage significance, the wider proposed DCO Order Limits are required to potentially avoid archaeological finds by the cable construction.
- The proposed DCO Order Limits widen in the area leading up to Sullington Hill to retain access to the final cable easement during the operation and maintenance phase of the Proposed Development.

#### Sheet 28, plot 28/2

- This area of the onshore cable corridor has wider proposed DCO Order Limits to provide required flexibility for the crossing of multiple assets including:
  - Downs Link Path a major PRoW;
  - Multiple UKPN Overhead power lines including 11kV and 33kV lines;
  - o Multiple Southern Water assets, including a trunk main; and
  - o A HP Gas-pipeline of SGN.

As there are several utility located in close proximity, more detailed consideration needs to be given to determine the final crossing location of services within the proposed DCO Order limits. Therefore, this requires flexibility to ensure the crossing design meets the engineering requirements. This will be determined during detailed design following surveys and once detailed information for all existing utilities in this area is available.

- As there will not be any soil storage at areas where the cable corridor will cross utilities, the soil storage for these locations will be in adjacent locations along the cable corridor, the proposed DCO Order Limits are drawn to facilitate this.
- The PRoW ("Downs Link Path" Reference 3514 as shown in the Access, Rights of Way and Street Plans [APP-012]) will require a
  temporary diversion (as shown in the AROW plan). Sufficient space is required in order to be able to implement a diversion which is
  convenient to users.
- Some areas adjacent to the wider Order Limits of plot 28/2 are located in Flood Zones 2 and 3. There may be a requirement to temporarily store soil from the flood zones area in the wider areas of plot 28/2.

Sheet 31, plots 31/2 and 31/3



- The wider area to the west of the proposed trenchless crossing is marked as Works No 14 and shown in the **Onshore Works Plans [PEPD-005]** and is required to run the haul road.
- The Western Extent of Works No 14 was defined by the desire to cross the tributary of the Cowfold Stream with the least impact. During the field surveys conducted in 2021 there was evidently a gap in the vegetation at this location and evidence of a crossing point having been used by vehicles. It is important to reduce the impacts on this tributary, particularly given the detection of water vole here during the surveys as well as the potential importance of this habitat to other protected species.
- It is not possible to take the haul road to cross where the cable crosses using a trenchless crossing because of the confluence of two Flood Zones 2 and 3. Avoiding the flood zone is a practical measure to reduce construction risks and also follows on from environmental policy. The Applicant has followed the sequential test to avoid the risk of surface water flooding and the flood risk posed by the Cowfold Stream itself.
- The operational access along the cable easement would also seek to utilise the existing gap in the vegetation and the crossing point over the tributary of the Cowfold stream.



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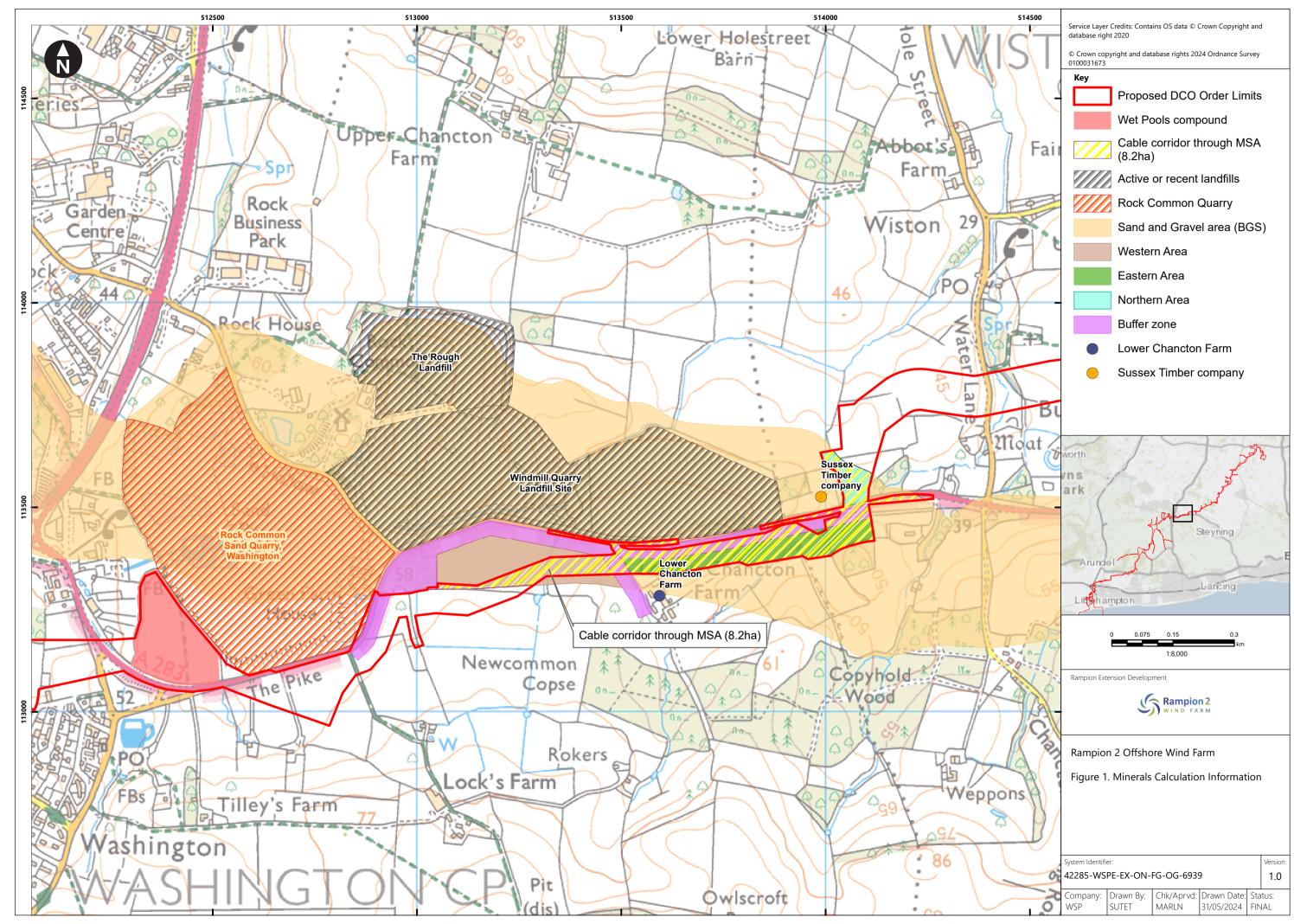
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# **Figure 1 Minerals Calculations Information**





# Appendix A Applicant's Response to Action Point 46 and 57



### Rampion 2 Wind Farm

## **Applicant's Response to Action Points 46 and 57**





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### 1. Introduction

### 1.1 Purpose

- This Appendix provides a technical note which details the Applicant's response to Action Points 46 and 57 within Action Points arising from Issue Specific Hearing 2 (ISH2) [EV5-018]. These Action Points are as follows:
  - Action Point 46: "The Applicant to provide a notice on the impact of the proposed Kent Street traffic management strategy on the overall traffic modelling for the Proposed Development"; and
  - Action Point 57: "The Applicant to submit into the Examination and provide Cowfold Parish Council with details of turning movements at all junctions and proposed accesses along the A272".
- Given these action points both relate to the provision of estimated construction traffic flows to / from the A272 it is considered appropriate to include a response in one technical note within this Appendix.
- Estimated peak construction traffic flows have been derived using the methodology provided in Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the Environmental Statement (ES) [REP3-021], which itself takes account of prescribed construction traffic routing and controls contained in the Outline Construction Traffic Management Plan [REP3-029] updated at Deadline 4. Specifically in response to Action Point 46, construction traffic flows have been provided for the A272 as used in Chapter 32: ES Addendum, Volume 2 of the Environmental Statement (ES) [REP1-006] and taking account of Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies included within Appendix D of the Outline Construction Traffic Management Plan [REP3-029] updated at Deadline 4.
- Such construction traffic controls includes use of a Delivery Management System (DMS), which will be used to manage construction deliveries. This DMS, through use of pre-booked delivery slots, will control the delivery of materials and equipment so that the number of construction vehicles on the road network at any one time can be minimised and so that deliveries can be spread across the working day. Further information on the DMS is provided in Section 8.4 of the Outline Construction Traffic Management Plan [REP3-029] updated at Deadline 4.

### 1.2 Construction Traffic Flow Scenarios

Given the length of the construction programme and transient nature of construction activity along the onshore cable route, it is not appropriate to provide a single scenario of estimates construction traffic flows. Estimated construction traffic flow information included within this technical note is therefore provided for the peak of construction traffic activity at a number of locations.



- Estimated construction traffic flow information has been provided for the following scenarios:
  - Peak week of construction traffic for junctions on the A272 between Cowfold and the A23, based upon data used for assessments contained within Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006]; and
  - Peak week construction traffic on Kent Street and construction traffic flows at construction accesses along the A272 for the same week with the controls setout in Appendix D of the Outline Construction Traffic Management Plan [REP3-029] updated at Deadline 4.
- 1.2.3 Construction traffic flows associated with these scenarios are provided in **Sections 2** and **3** of this technical note.
- In viewing the construction traffic flows provided within this technical note, the following should be taken into account:
  - For assessment purposes, it has been assumed that approximately 25% of heavy goods vehicles (HGVs) accessing junctions on the A272 route through Cowfold. This assumption was applied for assessment purposes only. Given commitments C-157 and C-158 (Outline Construction Traffic Management Plan [REP3-029]) state that construction HGVs should only route through Cowfold to access A-56 or A-57 or where use of locally sourced materials / equipment make its avoidance impracticable, the actual HGV flows should be much lower than assessed.
  - All daily construction traffic estimates have been taken from weekly estimates and divided these by 5 working days rather than 5.5 working days (thereby excluding the Saturday working day). The daily flows are therefore artificially higher than would likely occur in reality.
  - Estimates of construction traffic light goods vehicles (LGVs) are based upon robust estimates that assume all construction workers travel to each temporary construction compound via single occupancy car. It is considered commonplace however for construction workers to be based in shared accommodation such as hotels and B&Bs and travel to site together. The Construction Workforce Travel Plan [REP3-031] also makes provision for the use of multi-occupancy vehicles such as mini-buses to collect construction works from cluster locations, such as temporary accommodation or rail stations.
  - West Sussex County Council has agreed as acceptable the assessment methodology and baseline data used within the Chapter 32: ES Addendum, Volume 2 of the ES [REP1-006] as stated in their response to the Examining Authority's First Written Question TA1.2 of West Sussex County Council's Deadline 3 Submission – Responses to Written Questions (ExQ1) [REP3-073].
  - West Sussex County Council has also agreed with the Applicant's conclusions contained within the Review of IEMA Guidelines in Deadline 2 Submission 8.41 Category 8: Examination Documents Review of IEMA Guidelines on Environmental Assessment of Traffic and Movement [REP2-017] in their response to the Examining Authority's First Written Question TA1.2 of West Sussex County Council's Deadline 3 Submission Responses to Written



Questions (ExQ1) [REP3-073]. This note concluded that no further assessment work was required in relation to the 2023 guidance and that the conclusions of the ES remained valid.



### 2. Peak week construction traffic flows on the A272

### 2.1 Introduction

- 2.1.1 This Section provides a summary of construction traffic flows along the A272 during the peak week of HGV activity and includes construction traffic associated with the following construction access locations:
  - Access A-62: Oakendene temporary construction compound;
  - Access A-63: Oakendene substation;
  - Accesses A-61 and A-64 located on Kent Street; and
  - Accesses A-67 and A-68 located on Wineham Lane.
- A number of different traffic flow scenarios are provided to reflect that the peak week of construction activity is not the same for all locations. This means that the peak of activity at accesses A-62 or A-63 may be at a different time to peak construction activity for accesses A-61 and A-64 on Kent Street.

### 2.2 Individual peak week HGV construction traffic flows

Details of peak construction traffic flows for all proposed access junctions is provided within Table 6-8 of the Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the ES [REP3-021].

### 2.3 Peak week construction traffic flows on A272

- In addition to peak week construction traffic data for individual junctions, a summary of construction traffic use for the same week at other junctions on the A272 as shown in Table 2-1. This shows the estimated number of construction traffic movements across the whole of the A272 for each construction access peak and demonstrates how construction traffic flows are spread across the construction programme.
- Table 2-1 shows estimated daily construction traffic movements associated with each access on the A272. The text highlighted in red demonstrates the peak of total construction traffic flows for each access junction.
- Estimates of construction traffic movements at each access is taken from Annex A of the Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the ES [REP3-021]



Table 2-1 A272 Network Peak Daily Construction Traffic Flows

		A2	A-62       A-63         0       34         11       90         11       90         26       12         26       12         87       64         87       64         9       12         9       12         32       65         32       65         0       2         0       2         8       50		Street	Wineham Lane			
Week	Construction Traffic	Access A-62		Access A-61	Access A-64	Access A-67	Access A- 68		
83	HGVs In	0	34	0	0	0	0		
	HGVs Out	0	34	0	0	0	0		
	Total In	11	90	0	0	0	0		
	Total Out	11	90	0	0	0	0		
125	HGVs In	26	12	0	2	0	0		
	HGVs Out	26	12	0	2	0	0		
	Total In	87	64	0	6	19	24		
	Total Out	87	64	0	6	19	24		
127	HGVs In	9	12	0	0	0	9		
	HGVs Out	9	12	0	0	0	9		
	Total In	32	65	0	0	0	28		
	Total Out	32	65	0	0	0	28		
160	HGVs In	0	2	15	0	0	2		
	HGVs Out	0	2	15	0	0	2		
	Total In	8	50	16	0	0	13		
	Total Out	8	50	16	0	0	13		
162	HGVs In	0	2	0	28	0	1		
	HGVs Out	0	2	0	28	0	1		
	Total In	15	50	0	29	0	13		
	Total Out	15	50	0	29	0	13		

Table 2-1 shows how estimated construction traffic varies with peaks of activity at each access junction generally occurring at different times. These have been considered in more detail in **paragraphs 2.3.5 to 2.3.18** below.



### Week 83

- Week 83 is the peak for construction traffic at Access A-63, Oakendene substation. During this week, 34 HGVs per day are estimated to enter and exit junctions on the A272 (68 movements in total). This means that an 5-6 HGVs per hour will be completing turning movements or one vehicle every 10-12 minutes.
- In this week, the maximum number of construction traffic turning movements is estimated to be at Access A-63, which will serve 90 vehicles in and 90 vehicles out of the junction per day, which on average is a vehicle using the junction every 4 minutes. Other than Access A-63, a minimal number of construction vehicles are anticipated to use Access A-62.
- During week 83, Accesses A-61, A-64, A-67 and A-68 are not estimated to generate any construction traffic. That means there will be no construction traffic turning into or out of Kent Street or Wineham Lane during the peak of construction activity at Access A-63.

### **Week 125**

- 2.3.8 Week 125 is the peak for construction activity at Access A-62, which is the Oakendene temporary construction compound. This will serve 52 HGV movements per day during this week, or 4-5 per hour. All other access junctions will generate only 2-3 HGVs per hour in total during this week.
- Overall, Access A-62 is estimated to serve 87 construction vehicle entries and 87 vehicle exits per day during week 125, which means that, on average, a construction vehicle will use the junction every 4-5 minutes. During this week, Access A-63 also serves 64 construction traffic vehicles in each direction, which averages at one vehicle every six minutes.
- As noted within the Annex C of Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the ES [REP3-021], this level of activity at Access A-62 remains above 95% of the peak week for only 2 weeks of the construction programme and above 75% for a further 2 weeks.
- Week 125 is also the peak for construction activity at Access A-67 located on Wineham Lane. Whilst no HGV will use the access during this period, a total of 19 construction vehicle entries and exits per day will occur during this week, averaging 1-2 vehicles per hour using Access A-67.

### **Week 127**

- Week 127 is the peak for construction activity at Access A-68, located on Wineham Lane. During this week, Wineham Lane will accommodate 18 HGV movements in total (1-2 per hour) and approximately 40 LGVs (3-4 per hour).
- Overall, the number of HGVs using the A272 is fairly low in this week with HGVs only accessing Accesses A-62, A-63 and A-68. In total 30 HGVs will enter and exit junctions on the A272 (60 in total), equivalent to one HGV every 12 minutes.



Access A-63 serves the maximum number of total construction traffic vehicles during this week, with approximately 130 vehicle movements in total per day, which will mainly be LGVs.

### **Week 160**

- Week 160 is the peak for construction activity at Access A-61, which is located on Kent Street. This will serve approximately 30 construction traffic vehicles per day via the A272, the majority of which will be HGVs. The other accesses on the A272 however serve very few HGVs during this week, with only Accesses A-62 and A-68 in use with these generating 8 HGV movements in total (less than one per hour).
- Total construction traffic flows using accesses on the A272 are also lower in week 160 than other peaks, with Access A-63 serving the most construction vehicles at 50 entries and 50 exits per day or one vehicle using the junction every 7-8 minutes. This lower volume of construction traffic at Access A-63 is also combined with lower traffic flows at other accesses, with only Accesses A-62 and A-68 serving construction vehicles during this week.

#### **Week 162**

- Week 162 is the peak for construction activity at Access A-64, which is also located on Kent Street. This will serve 60 HGV movements per day during this week, or 4-5 per hour. In total, all other access junctions will generate one HGV every two hours during this week.
- In total, 107 construction vehicles will enter and exit construction access junctions per day during this week (214 movements in total), with Access A-63 serving the most construction vehicles at 50 entries and 50 exits per day or one vehicle using the junction every 6-7 minutes.

### 2.4 Peak week construction traffic flows on A272 / A281 in Cowfold

- As detailed within Appendix 23.2: Traffic Generation Technical Note, Volume 4 of the ES [REP3-021], the peak construction activity at individual accesses shown in Table 2-1 have been combined with construction traffic routing contained within the Outline Construction Traffic Management Plan [REP3-029] to calculate the volume of construction traffic on highway links within the transport Study Area. These have then been used in the assessment of the construction phase of the Proposed Development contained within Chapter 32: ES Addendum Volume 2 of the ES [REP1-006].
- The estimated construction daily traffic flows passing through the A272 / A281 junction in Cowfold is shown in **Table** 2-2 below, for the peak HGV week and peak total construction traffic week. In addition to traffic associated with the junctions included in Table 2-1 the estimates provided in **Table** 2-2 also include construction traffic using Accesses A-56 or A-57, which is permitted to route through Cowfold within the **Outline Construction Traffic Management Plan [REP3-029]**.



2.4.3 The total construction traffic peak through Cowfold is in week 83.

Table 2-2 A272 / A281 total construction traffic peak week flows

Highway Link	Direction	Total construction traffic per weekday	Construction traffic HGVs per weekday		
A281 North	Northbound	0	0		
	Southbound	0	0		
A272 Bolney Road	Eastbound	104	10		
	Westbound	139	10		
A281 South	Northbound	18	1		
	Southbound	53	1		
A272 Station Road	Eastbound	86	10		
	Westbound	86	10		
A281 between	Northbound	86	10		
roundabouts	Southbound	86	10		

Table 2-2 shows that in the week of peak construction traffic movements through the A272 / A281 junction in Cowfold (week 83), there will be approximately 250 vehicles routing through the two mini-roundabouts per day, of which 21 will be HGVs. This construction traffic is predicted to be split between A272 Bolney Road (57%), A272 Station Road (35%) and A281 south of the roundabout (8%).

### 2.5 A23 / A272 peak week construction traffic flows

- 2.5.1 Using the same methodology as **Section 2.4**, a summary of peak week construction traffic flows is provided for the A23 / A272 junction in **Table 2-3** below.
- The A23 / A272 junction is the main entry point onto the local road network for construction HGV traffic based upon the permitted construction traffic routing contained within the Outline Construction Traffic Management Plan [REP3-029].
- 2.5.3 The total construction traffic peak for the A23 / A272 is week 83.



Table 2-3 A23 / A272 total construction traffic peak week flows

Highway Link	Direction	Total construction traffic per weekday	Construction traffic HGVs per weekday
A23 North of A272	Northbound	56	27
	Southbound	56	27
A272 East of A23	Eastbound	15	0
	Westbound	15	0
A23 South of A272	Northbound	64	33
	Southbound	64	33
A272 West of A23	Eastbound	98	25
	Westbound	98	25

Table 2-3 shows that in the week of peak construction traffic movements through the A23 / A272 junction (week 83) there will be approximately 230 vehicles routing through the two junctions per day, of which 85 will be HGVs. Of the 230 vehicles, it should be noted that approximately 35 vehicles per day will route along the A23 northbound or southbound without interacting with the A272 junction. It is predicted that there will be an approximate 50/50 spit between traffic routing to / from the A23 north and south of the junction. This means that individual turning movements between on and off-slip will be limited to 50 vehicles per day per direction.



### 3. Impact of Kent Street Traffic Management Strategy

### 3.1 Introduction

- This Section provides a summary of an assessment of impact of the Traffic Management Strategy for Accesses A-61 and A-64 as detailed in the Construction Accesses A-26, A-28, A-61 and A-64 Traffic Management Strategies included within Appendix D of the Outline Construction Traffic Management Plan [REP3-029].
- To ensure that safe access can be achieved to Accesses A-61 and A-64 the Traffic Management Strategy for Kent Street will require all incoming HGVs to travel to Access A-62 (Oakendene temporary construction compound), before being called into site. This means that construction HGVs arriving from the east will need to route past Kent Street and into Access A-62.
- To inform this assessment, an update has been made to Table 2-1 which provided an estimate of peak week traffic flow at junctions along the A272. This update assumes that during Weeks 160 and 162 (the peak of construction activity for Accesses A-61 and A-64), all construction traffic associated with Accesses A-61 and A-64 is added to entry and exit movements at Access A-62. **Table** 3-1 shows the change in construction traffic movements as a result of the proposed traffic management strategy and **Table** 3-2 shows the revised daily traffic movements with the traffic management strategy in place. The text highlighted in red demonstrates the peak of total construction traffic flows for each access junction.



Table 3-1 Impact of Kent Street Traffic Management Strategy

		A2	272	Kent	Street	Wineham Lane			
Week	Construction Traffic	Access A-62	Access A-63	Access A-61	Access A-64	Access A-67	Access A-68		
160	HGVs In	+15		's In +15		0	0	0	0
	HGVs Out	+15	0	0	0	0	0		
	Total In	+16	0	0	0	0	0		
	Total Out	+16	0	0	0	0	0		
162	HGVs In	+28	0	0	0	0	0		
	HGVs Out	+28	0	0	0	0	0		
	Total In	+29	0	0	0	0	0		
	Total Out	+29	0	0	0	0	0		

Table 3-2 Construction traffic flow with Kent Street traffic management strategy in place

		A2	72	Kent	Street	Wineham Lane			
Week	Construction Traffic	Access A-62	Access A-63	Access A-61	Access A-64	Access A-67	Access A-68		
160	HGVs In	15	15 2		0	0	2		
	HGVs Out	15	2	15	0	0	2		
	Total In	24	50	16	0	0	13		
	Total Out	24	50	16	0	0	13		
162	HGVs In	28	2	0	28	0	1		
	HGVs Out	28	2	0	28	0	1		
	Total In	44 50		0	29	0	13		
	Total Out	44	50	0	29	0	13		



- Table 3-1 and Table 3-2 shows that total construction traffic flows at Access A-62 will remain much lower than the peak for this junction (week 125) when adding peak week traffic associated with Accesses A-61 and A-64. Total construction traffic flows using Access A-62 with the Kent Street traffic management strategy in place will be approximately 25% (week 160) and 50% (week 162) of the peak for Access A-62 (week 125). Importantly, it is also noted that Access A-62 is not estimated to cater for any HGV movements during the peak of construction activity at Accesses A-61 and A-64 which means that additional construction traffic can be accommodated without conflicting with other HGV movements at this junction.
- On the basis of this assessment, the Kent Street Traffic Management Strategy does not impact upon peak week construction traffic movements on the A272 west of Kent Street. The conclusions of **Chapter 32: ES Addendum, Volume 4** of the ES [REP1-006] therefore remain valid.







### **Appendix B Applicant's Response to Action Point 59**



# Rampion 2 Wind Farm Category 8: Examination Documents

**Applicant's Post Hearing Submission – Issue Specific Hearing 2** 

Appendix B – Applicant's Response to Action Point 59 – Low Carbon Solar Park 6

Date: June 2024

**Revision A** 





### **Document revisions**

Revision	Date	Status/reason for issue	Author	Checked by	Approved by	
Α	03/06/2024	Deadline 4	WSP	WSP	RED	



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### 1. Introduction

- This Appendix details the Applicant's response to Action Point 59 within Action Points arising from Issue Specific Hearing 2 (ISH2) [EV5-018], which is as follows, "The Applicant to submit the Low Carbon Solar Park 6 judgement into the Examination Also to explain the consequence of the Planning Judgement, with commentary."
- 1.1.2 In response to Action Point 59, the Applicant:
  - provides context to the Action Point by setting out the Applicant's approach to archaeological matters for Rampion 2 (Section 2);
  - discusses the case of the solar farm and distinguishing Rampion 2 (Section 3);
     and
  - provides a copy of the Low Carbon Solar Park 6 judgement (Annex A).



### 2. The Applicant's approach to archaeological matters on Rampion 2

### 2.1 Introduction

- 2.1.1 This Section sets out the Applicant's approach to archaeological matters on Rampion 2, with respect to following established best practice comparable to similar, consented large-scale cabling development schemes.
- The approach will inform the subsequent discussion in the Examination, on the relevance of R (Low Carbon Solar Park 6 Limited) v SSLUJC (**Section 3**).

### 2.1 National Policy Statement

- 2.1.1 The Applicant's approach is in line with the requirements of the Overarching National Policy Statement (NPS) for Energy (EN-1) (Department for Energy and Climate Change (DECC), 2011a).
- Section 5.8 EN-1-2011 of the NPS, current when the DCO Application was submitted in August 2023, provides the planning framework with respect to archaeology and sets out the requirements in support of nationally significant infrastructure projects.

### 2.1.3 Paragraph 5.8.8 states:

"...the applicant should provide a description of the significance of the heritage assets affected by the proposed development and the contribution of their setting to that significance. The level of detail should be proportionate to the importance of the heritage assets and no more than is sufficient to understand the potential impact of the proposal on the significance of the heritage asset."

#### 2.1.4 Paragraph 5.8.9 states:

"Where a development site includes, or the available evidence suggests it has the potential to include, heritage assets with an archaeological interest, the applicant should carry out appropriate desk-based assessment and, where such desk-based research is insufficient to properly assess the interest, a field evaluation."

#### 2.1.5 Paragraph 5.8.20 states:

"Where the loss of the whole or a material part of a heritage asset's significance is justified, the IPC should require the developer to record and advance understanding of the significance of the heritage asset before it is lost. The extent of the requirement should be proportionate to the nature and level of the asset's significance. Developers should be required to publish this evidence and deposit copies of the reports with the relevant Historic Environment Record. They should also be required to deposit the archive generated in a local museum or other public depository willing to receive it."



The updated NPS EN-1 (Department for Energy Security and Net Zero (DESNZ), 2024) similarly guides that the applicant should provide a description of the significance of the heritage assets and states at paragraph 5.9.11 that:

"Where a site on which development is proposed includes, or the available evidence suggests it has the potential to include, heritage assets with an archaeological interest, the applicant should carry out appropriate desk-based assessment and, where such desk-based research is insufficient to properly assess the interest, a field evaluation. Where proposed development will affect the setting of a heritage asset, accurate representative visualisations may be necessary to explain the impact."

2.1.7 Paragraph 5.9.21 states that:

"Where there is a high probability (based on an adequate assessment) that a development site may include, as yet undiscovered heritage assets with archaeological interest, the Secretary of State will consider requirements to ensure appropriate procedures are in place for the identification and treatment of such assets discovered during construction."

Essentially, the NPS (both 2011 and 2024 (Department of Energy and Climate Change (DECC), 2011; DESNZ, 2024)) requires detailed desk-based assessment to identify heritage assets potentially affected by the Proposed Development, with a professional assessment of heritage significance. Further survey should be undertaken where appropriate, and that this should be proportionate to the requirements of the Proposed Development.

### 2.2 The Applicant's approach to baseline assessment

- The Environmental Statement (ES) was supported by a detailed archaeological baseline derived from an extensive programme of data collection and survey, as detailed in **Chapter 25: Historic environment, Volume 2** of the Environmental Statement (ES) [PEPD-020]. This comprises:
  - Archaeological desk study [Appendix 25.2: Onshore historic environment desk study Part 1 of 2, Volume 4 of the ES [APP-200] and Appendix 25.2: Onshore historic environment desk study Part 2 of 2, Volume 4 of the ES [APP-201], which included a review of remote sensing data (LiDAR and aerial photographs); and
  - Geophysical survey [Appendix 25.4: Onshore geophysical survey report, Volume 4 (Parts 1 to 8) of the ES [PEDP-031], PEDP-113 to PEDP-119]. This generally produced good quality magnetic gradiometer results with good confidence. The survey area included the South Downs National Park (SDNP).
- The scope of additional survey work was discussed via a series of Expert Topic Group meetings, and at the request of West Sussex County Council and Historic England, the following was undertaken:
  - Targeted archaeological trial trenching where geophysical survey identified significant anomalies, which could not be understood on the basis of the geophysical survey results only (Appendix 25.6: Archaeological trial trenching at Brook Barn Farm, Volume 4 of the ES [APP-212]);



- Geoarchaeological and palaeoenvironmental assessment (Appendix 25.3: Onshore desk-based geoarchaeological and palaeoenvironmental assessment report, Volume 4 of the ES [APP-202]); and
- Assessment of historic parkland at Oakendene (Appendix 25.5: Oakendene parkland historic landscape assessment, Volume 4 of the ES [APP-211]).
- The results of these field surveys and remote sensing data have been reviewed and assessed in light of the existing, desk-based information that has been collected. This has been used to describe the significance of identified heritage assets with an archaeological interest and to draw informed conclusions on the potential for unidentified archaeological remains. The assessment presented in Chapter 25: Historic environment, Volume 2 of the ES [PEPD-020] has been informed by this range of baseline data and has taken a worst-case approach on the significance of archaeological remains. The assessment methodology is set out in Section 25.8 of Chapter 25: Historic environment, Volume 2 of the ES [PEPD-020].
- West Sussex County Council has highlighted potential for the presence within the South Downs National Park of Neolithic flint mines and associated lithic processing, and Neolithic settlement evidence. The known Neolithic flint mines beyond the proposed Development Consent Order (DCO) Order Limits survive as large concentrations of closely grouped shafts and pits. The geophysical survey identified no such substantial cut features within the proposed DCO Order Limits, which would suggest the presence of a flint mine or burial structures characteristic of the scheduled Neolithic flint mines nearby. The discovery of a previously unknown round barrow just outside of the proposed Order Limits (85\_1) does suggest that the survey was effective in identifying buried remains of former cut features within the downland.
- With regard to evidence of Neolithic settlement, the geophysical survey did not 2.2.5 identify any definitive evidence that was suggestive of settlement activity. The completion of trial trenching to test for the presence of Neolithic settlement would therefore necessarily be untargeted and unfocussed and is not considered appropriate at this stage. It is noted that the previous investigations at Blackpatch Hill (Wessex Archaeology 2006) investigated possible evidence for Neolithic settlement, but the features investigated proved to be tree throws of no archaeological interest. In the report, Wessex Archaeology (2006) concluded that the Blackpatch Hill site was not used for settlement associated with the Neolithic flint mines, and that such settlement would be more likely to be located within the more sheltered rivers valleys rather than on the Downs. Notwithstanding this lack of evidence for extensive or complex buried archaeological remains within the SDNP, the assessment within Chapter 25: Historic environment, Volume 2 of the ES [PEPD-020] has acknowledged that there is potential for undiscovered archaeological remains of high heritage significance within part of the South Downs in which the cable route falls (notably land between Km 12 and 17). A strategy for prospection and mitigation is considered in the Outline Onshore Written Scheme of Investigation [REP3-035] (see Section 2.3 below).
- The baseline work for Rampion 2 is comparable to, and indeed exceeds, the predetermination work conducted on other major linear cabling schemes, all which



have all received a DCO (or planning consent, in the example of Eastern Green Link 2):

- Southampton to London Pipeline Project (DCO). A 97km-long pipeline from Hampshire to the London Borough of Hounslow, including the SDNP.
- Norfolk Boreas Offshore Wind Farm onshore grid connection (DCO). An
  offshore windfarm project with an onshore 60km long-cable route.
- Yorkshire Green Energy Enablement Project (DCO). Upgrading of 275kV and 400kV network involving new overhead lines, substation and underground sections.
- Viking Link UK Onshore (DCO). A 67k underground cable and converter station forming the UK onshore element of a connector between the British and Danish transmission systems.
- Eastern Green Link 2 (EGL2) Project onshore England. 68km cable within the East Riding of Yorkshire, part of a 2GW high voltage direct current cable link to be built between Peterhead and Drax.
- For each of the above projects, desk-based assessment was undertaken along with geophysical survey. Whilst the limitations of geophysical survey are widely acknowledged in terms of limited reliability on certain geology types and with certain types of assets (e.g. flint concentrations), this form of survey, along with the desk-based assessment, provided sufficient information to characterise the archaeology to enable the Secretary of State (or the local authority) to consent each of the above schemes.
- The Applicant's approach to archaeological data collection and assessment for the 2.2.8 Rampion 2 project has therefore been comparable with or exceeding that carried out for comparable projects. The significance of known and potential below ground archaeological remains has been assessed in Chapter 25: Historic environment, Volume 2 of the ES [PEPD-020] on the basis of desk-based, remote sensing and geophysical survey data in accordance with normal good practice for an assessment of this type. For example, the ES for the Southampton to London Pipeline Project similarly identified varying degrees (moderate to very high) potential for the presence of below ground archaeological remains of various date including Neolithic, Bronze Age, late Prehistoric and Romano-British, and the significance of probable archaeology identified by geophysical survey was assessed with reference to desk-based sources. In this case, it was agreed with the relevant statutory consultees that trial trenching was not required prior to the submission of this ES. Instead, trial trenching was recognised as a requirement to design further archaeological work and a general approach was set out in an archaeological method statement (i.e. written scheme of investigation). In the case of Rampion 2, where required, targeted trial trenching was undertaken to understand the significance of complex archaeological remains identified by geophysical survey. Further archaeological work is set out in the Outline Onshore Written Scheme of Investigation [REP3-035] which also includes provision for non-standard methods of evaluation, including fieldwalking and test-pitting within the South Downs. The non-standard methods were recommended by WSCC and Historic England in their responses to S42 consultation (24th Feb to 27th March 2023) and were included by the Applicant in the Outline Onshore Written



**Scheme of Investigation [REP3-035]** in response to the potential for worked flint and flint scatters which may be present across this section of the SDNP, particularly within the disturbed ploughsoil, which is extensive in this area due to past and present agricultural activities.

### 2.3 Onshore Outline Written Scheme of Investigation

- The Applicant has submitted an Outline Onshore Written Scheme of Investigation [REP3-035] which sets out the Applicant's commitment to undertake further, intrusive evaluation, to allow the formulation of an appropriate mitigation strategy, where required, for any significant archaeological remains. The Outline Onshore Written Scheme of Investigation [REP3-035] provides details on the relevant methods, guidance, standards together with roles and responsibilities for subsequent archaeological work.
- This is consistent with the comparable cabling projects listed in **paragraph 2.2.6** above. Each project included the provision of an Outline Written Scheme of Investigation/OWSI (or equivalent). Following the granting of consent, the approach and commitments set out in the OWSI (or equivalent), including site-specific WSIs setting out the scope and methodology for the archaeological work, are then secured through a planning requirement. For Rampion 2, this is Requirement 19 of the **Draft Development Consent Order [REP3-003]**.
- The Applicant's approach to Rampion 2 follows clearly established practice for major cabling projects. The Applicant has put forward a proportionate approach, conducted additional survey work at the request of the stakeholders, and does not propose to deviate from this established practice.

### 2.4 Mitigation through design adjustment

- Appendix B of the updated Outline Onshore Written Scheme of Investigation [REP3-035] sets out a clear protocol (underpinned by embedded environmental measure C-225 in the Commitments Register [REP3-049]) for the preservation in situ in the unlikely event that archaeological remains of exceptional (i.e. national) significance are found to be present. Such remains, which meet the criteria for scheduling (for example, well preserved/upstanding/complex/extensive), and which might warrant preservation in situ rather than preservation by record (for example, targeted excavation and recording), are exceptionally rare. The inclusion of this protocol into the updated WSI is in response to concerns raised by WSCC during the examination regarding the mitigation of potentially nationally significant archaeological remains.
- The proposed onshore cable trenching will result in a very localised impact, albeit along an extended linear onshore cable route. The main impact is therefore not from the cable trench excavation but rather the 40m-wide 'working width' in which topsoil will be stripped under archaeological supervision to allow the movement of plant and for soil storage. This allows much flexibility in the form of design adjustment and avoidance within the proposed DCO Order Limits, where this is warranted and feasible:



- detailed routing of the 40m-wide 'working width' following further investigations, where topsoil will be stripped under archaeological supervision, to avoid impact to archaeological remains;
- reduction of the working width to 20m in places and relocating soil storage areas to avoid impact to archaeological remains; and
- the use of track matting or such within the working width to protect archaeological remains immediately beneath the topsoil from the movement of plant within the working width.
- For example, flexibility in the line of the proposed onshore cable route, and the use of track matting, could be considered in an area of prehistoric or Romano-British agricultural and settlement activity between Lyminster and Poling ('Field 038'). These were identified by geophysical survey as described in the Appendix 25.4:

  Onshore geophysical survey report, Volume 4 of the ES [PEDP-031, PEDP-113 to PEDP-119], with their heritage significance and effects on this assessed in the updated Chapter 25: Historic environment, Volume 2 of the ES [PEPD-020]. As this area of archaeology likely extends beyond the proposed DCO Order Limits, flexibility in the alignment of the onshore cable route and the narrowing of the onshore cable corridor would mean that only a part of the area of archaeological interest would be disturbed and provision for archaeological recording is secured by the Outline Onshore Written Scheme of Investigation [REP3-034].
- In addition, the width of the proposed DCO Order Limits has been expanded to 100m where it crosses an area of high archaeological potential west and north of Blackpatch Hill in order to retain maximum flexibility in the detailed routing. This design measure responds to the potential presence of as yet unknown archaeological remains in this area (as referred to in paragraph 2.2.4), whilst noting the available evidence which has informed the assessment presented in Section 25.9 of Chapter 25: Historic environment, Volume 2 of the ES [PEPD-020], particularly paragraphs 25.9.143 to 25.9.172.
- As discussed in Section 2.2, geophysical survey in this area did not identify any areas of extensive or complex archaeological remains that would require further investigation by trial trenching to understand their significance. Whilst the existing evidence does not confirm the presence of archaeological remains that may be of high heritage significance, a precautionary worst-case assessment has been undertaken, which has informed the need for flexibility in the design to allow an appropriate response in the unlikely event that such remains are identified during the evaluation stages of work set out in the Outline Onshore Written Scheme of Investigation [REP3-034].



### The case of R (Low Carbon Solar Park 6 Limited) v SSLUJC

### 3.1 Background and facts

- The case concerned a challenge to the procedural fairness of the way that an application for planning permission was determined by the Secretary of State under an application for development of a solar farm made directly to them under s62A Town and Country Planning Act 1990.
- The applicant for planning permission, Low Carbon Solar Park 6 Limited, had undertaken a geophysical survey as part of its environmental impact assessment which had identified "significant and extensive archaeological activity at three locations in the proposed development site" potentially comprising non-designated heritage assets (paragraph 11).
- Consultation responses from both the local planning authority and Historic England both requested "targeted trial-trenching" in order to establish the significance of these identified assets (paragraphs 16 and 17). No such targeted trial trenching was undertaken.
- Instead, the applicant submitted a rebuttal report through which it attempted (inter alia) to address those responses (paragraphs 21 and 22). In that report, the applicant made it clear that it relied on mitigation including above ground installation techniques that were not intrusive and would avoid harm, that a condition relating to detailed design approval could secure such mitigation and that post-construction trial trenching would inform this process (paragraph 24).
- The Inspector refused to accept the rebuttal report from the applicant on the basis that it had not been requested and that they had discretion to refuse to accept submission received after the close of the representation period (paragraph 25). The Inspector went on to refuse the application due to the cumulation of harms from a variety of impacts clearly outweighing the benefits of the project (paragraph 32).
- As part of their reasoning, the Inspector stated that in the absence of trial trenching they were not able to understand the significance of the assets, the potential impact upon them and consequently whether the mitigation proposed would avoid material harm (paragraph 31).
- The applicant challenged the Inspector's decision on the basis that the refusal to accept the rebuttal report was procedurally unfair. As such, it should not be viewed as providing a generic conclusion on the extent of survey effort required to assess the impact of proposals on non-designated heritage assets in any particular case.

### The judgement

The judgment concluded that the Inspector had not acted in a procedurally unfair manner noting at paragraph 49 that:



"As the inspector noted [43], an understanding of the significance of heritage assets is the starting point for determining any mitigation, and it is not appropriate to discuss mitigation without that understanding. To approach the matter from the direction which the claimant does, by saying there is no harm, is, in my judgment, to approach the matter the wrong way round. There needs to be an understanding of significance in order to assess whether any mitigation appropriately addresses any harm. It is clear that the claimant did not undertake any evaluations to identify the significance of the historical assets revealed in the March 2022 geophysical survey, seemingly because it took the view that such a requirement was inapplicable where mitigation could avoid harm. In my judgment, the view was in error."

### 3.2 The nature of the proposed development and potential for avoidance

- The case of R (Low Carbon Solar Park 6 Limited) v SSLUJC concerns a proposed solar farm development, the nature of which is very different from that of a linear onshore cable route.
- The location and extent of the proposed solar farm development, and the area of archaeological impact, is fixed.
- As discussed in **paragraph 2.4.2** above, the main impact with Rampion 2 is within the working width, rather than the localised impact of the cable trenching; this is simply a work area rather than design-critical and can be adjusted accordingly where required. The proposed DCO Order Limits are also sufficiently wide to allow modifications to the line of the proposed cabling route to avoid or minimise impacts to any exceptional (nationally important) archaeological remains, where this is warranted and feasible.

### 3.3 Major cabling routes established practice

- Rampion 2 has adopted the same approach to archaeological evaluation and to mitigation as has been undertaken on numerous other DCO-consented major cabling projects, as set out **paragraph 2.2.6** above.
- Following discussions with stakeholders, the Applicant has gone beyond what has been undertaken on other, comparable, DCO-consented schemes, and agreed to additional targeted intrusive survey at specific locations to clarify archaeological potential, (i.e. to determine whether the remains exceptional (nationally important)), which might warrant refusal of the granting of DCO consent.
- For example, archaeological trial trenching undertaken by the Applicant to clarify the significance of a complex of geophysical anomalies at Brook Barn Farm, confirmed that the remains are not of high heritage significance. Industry-standard and more appropriate mitigation as **Outline Onshore Written Scheme of Investigation [REP3-034]** would apply in this instance (i.e. targeted archaeological excavation and recording), to achieve preservation by record. For geophysical anomalies within Field 038, the approach is discussed in **paragraph 2.4.3**. As described in **Chapter 25: Historic environment, Volume 2** of the ES [**PEPD-020**]; the form of the geophysical anomalies suggest Iron Age or Romano-



British date, supported by the available evidence for late Iron Age and Roman activity within the vicinity (see discussion of features 38\_1, 38\_2 and 38\_3 in Table 25-19 in Chapter 25: Historic environment, Volume 2 of the ES [PEPD-020]). The anomalies likely indicate the presence of fairly typical occupation and field systems of these periods, similar to that identified at Brook Barn Farm. There would be loss of remains within the development footprint, though mitigation measures including narrowing of the cable corridor and routing within the proposed DCO Order Limits would be adopted. As this area of archaeology likely extends beyond the proposed DCO Order Limits, the narrowing of the cable corridor would mean that only a part of the area of archaeological interest would be disturbed and provision for archaeological recording would be secured by the Outline Onshore Written Scheme of Investigation [REP3-034]. Nevertheless, a precautionary, worst-case approach is taken in Chapter 25: Historic environment, Volume 2 of the ES [PEPD-020], identifying this as a significant effect, though it would represent less than substantial harm.

- A programme of further trenching, leading to the formulation of an appropriate mitigation strategy, including where warranted and feasible, avoidance (i.e. embedded mitigation), is presented in the **Outline Onshore Written Scheme of Investigation [REP3-034]**. The strategy set out in that document will be secured via standard DCO Requirements, in the **Draft Development Consent Order [REP3-003]** Requirement 19.
- As with other major DCO-consented cabling routes, bearing in mind the nature of the Proposed Development along with the Applicant's commitment to putting in place appropriate mitigation measures (which includes avoidance options that were not available for the Low Carbon Solar Park 6 scheme), sufficient information has been submitted to enable the Secretary of State to make an informed decision to either grant or refuse planning consent.

### 3.4 Summary conclusion

The Applicant has conducted an extensive, proportionate, assessment given the nature of the scheme and its design flexibility. The Applicant has followed, and in places gone beyond, accepted practice on comparable DCO-consented schemes. There is sufficient information in the form of a robust assessment of heritage significance and significance of effect (as set out in Chapter 25: Historic environment, Volume 2 of the ES [PEPD-020]) and sufficient mitigation in place, to support a planning decision.



### 4. References

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[Accessed 31

May 2024].



### Annex A Low Carbon Solar Park 6 Limited judgement



Neutral Citation Number: [2024] EWHC 770 (Admin)

Case No: AC-2023-LON-001889

IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION PLANNING COURT

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 05/04/2024

Before:

### **HIS HONOUR JUDGE JARMAN KC**

Sitting as a judge of the High Court **Between:** 

R (LOW CARBON SOLAR PARK 6 LIMITED)

- and 
(1) SECRETARY OF STATE FOR

LEVELLING UP HOUSING AND

Claimant

Defendants

COMMUNITIES
(2) UTTLESFORD DISTRICT COUNCIL

-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
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Mr Michael Humphries KC and Mr George Mackenzie (instructed by Burges Salmon) for the claimant.

**Ms Sasha Blackmore** (instructed by **Government Legal Department**) for the **first defendant**The second defendant did not appear and was not represented.

Hearing dates: 19 March 2024

### JUDGMENT

This judgment is deemed to be handed down remotely at 11.30 am on 5 April 2024 and copies sent to the parties and to National Archives

#### **HHJ JARMAN KC:**

#### Introduction

1. The claimant, with the permission of Lang J, challenges a decision dated 11 May 2023 of an inspector appointed by the first defendant (the Secretary of State) under section 76D of the Town and Country Planning Act 1990 (the 1990 Act), refusing planning permission for the construction and operation of a solar park at Pelham, Manuden. The proposed development comprises ground mounted solar voltaic arrays, battery storage, inverter cabins, DNO substation, customer switchgear, access, fencing, cctv cameras and landscaping. There is only one ground of challenge, and that is that the inspector dealt with the claimant's application for planning permission in a way that was procedurally unfair. That is denied by the Secretary of State. The second defendant, the local planning authority (the authority), has taken no part in these proceedings.

### Statutory framework

- 2. The application was made directly to the Secretary of State under section 62A of the 1990 Act, inserted by section 1 of the Growth and Infrastructure Act 2013 to promote more efficient determination of applications for planning permission. The claimant was able to choose to proceed in this way, rather than by an application to the authority in the normal way, as the Secretary of State had on 8 February 2022 designated the authority as one which was not adequately performing its function of determining applications for the purposes of section 62B of the 1990 Act. Consequently, applications for planning permission for major development within the authority's area could be made directly to the Secretary of State under section 62A of the 1990 Act. The relevant procedure for such an application is set out in Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 (the 2013 Order) and the Town and Country Planning (Section 62A Applications) Written Representations and Miscellaneous Provisions) Regulations 2013 (the 2013 Regulations).
- 3. The most pertinent articles of the 2013 Order include the following. Articles 17(6) and 18(1) provide that the Secretary of State must, in determining a section 62A application, take into account any representations made to him by a statutory consultee or a local planning authority, and by article 21 must publish all consultation responses on a website. This the claimant submits is to enable applicants to see what is being said about an application and respond if necessary. Article 24(1)(c) requires decision notices to include a statement explaining whether, and if so how, in dealing with the application, the Secretary of State has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application.
- 4. Regulation 6 of the 2013 Regulations provides as follows:
  - "6.— Determining the application: standard applications

- (1) This regulation applies where a relevant application is a standard application.
- (2) When making his determination, the inspector—
- (a) must take into account any representations made to the Secretary of State pursuant to any notice of, or information about, or consultation in relation to, the application, under articles 9, 13, 14, 16, 17 or 18 of the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 which are received within the representation period; and
- (b) may disregard any representations or information received after the end of the representation period.
- (3) If, after the end of the representation period, the inspector takes into consideration any new information (not being a matter of government policy), he must not determine the application without first— (a) notifying in writing the applicant and any interested person of the new information; and (b) affording them an opportunity of making written representations to him."
- 5. There are two other relevant provisions. First, under article 23(2)(c) of the 2013 Order an applicant may agree an extended period for the application to be determined. Second, under section 319A(4) of the 1990 Act the mode of determination may be varied by a subsequent determination at any time before the proceedings are determined. Accordingly a variation from a written representations procedure to a hearing would allow all parties to have their say to ensure that obviously material considerations would be dealt with in a procedurally fair manner.

### National policy

- 6. The National Planning Policy Framework (the Framework) as in force at the relevant time, deals with heritage assets in section 16, entitled "Conserving and enhancing the historic environment. In particular [194] provided:
  - "194. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an

appropriate desk-based assessment and, where necessary, a field evaluation."

- 7. Footnote 68 provided that non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.
- 8. [200] to [203] of the Framework provided:
  - "200. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of: a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional; b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II\* listed buildings, grade I and II\* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.
  - 201. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply: a) the nature of the heritage asset prevents all reasonable uses of the site; and b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and d) the harm or loss is outweighed by the benefit of bringing the site back into use.
  - 202. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
  - 203. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."

## Guidance from PINS

9. PINS issues guidance from time to time in relation to section 62A applications, which does not have statutory status. That in force at the material time at section 2

emphasised that pre-application advice can be sought from the local planning authority and/or PINS and that applicants should engage with key stakeholders, such as statutory consultees, and provide responses to PINS early in the process. At section 3 applicants were strongly encouraged to identify what the main issues are likely to be with reference to the development plan, the Framework, supplementary guidance documents and issues raised by pre-application community consultation or advice and to ensure that all the issues identified are adequately and appropriately addressed in the application submission.

## Background

- 10. The claimant made a previous application in 2021 to the authority for similar development before such designation. The application related to a similar site, although that included an area of land to the north and south east which was excluded from the section 62A application. In January 2022 the authority issued a screening opinion that concluded that that scheme would not give rise to significant adverse effects and was not EIA development within the meaning of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). The authority refused that application later that month for several reasons. These included landscape and visual impact, heritage impact on designated assets, and failure to provide sufficient information on the impact on archaeological assets, protected species, electricity lines, drainage and flooding.
- 11. Consequently, the claimant commissioned a geophysical survey in March 2022, which recorded anomalies indicative of significant and extensive archaeological activity at three locations in the proposed development site. These were interpreted as highly likely to be settlement activity, possibly of different periods. The first comprised a series of fields and smaller enclosures extending for approximately 500m along the western edge of the site. The second was to the north of the site, where a moated feature was confirmed with outlying fields and where there were complex but well defined features in two areas, but it was difficult to be certain where one area finishes and the other starts or indeed whether they overlap. The third was an isolated enclosure complex bordering the north-west corner of Battle's Wood.
- 12. The survey was considered by the archaeological officer at Essex County Council (ECC) but Historic England (HE) was not at that stage consulted upon it. The ECC archaeologist's initial comments included a recommendation that the first two areas identified by the survey should be removed from the scheme with no groundworks within the area. Alternatively, if a panel design could be achieved using only surface mounting, then this could be considered within this area and potentially on the wider landscape. As for the second area, the recommendation was to undertake a targeted evaluation to define the significance of the area. This should include the potential moat and other features and the other areas identified in the survey. The archaeologist commented that following this appropriate discussion could take place regarding mitigation strategies for either preservation in situ, preservation by record or design solutions which protect the archaeology.
- 13. The claimant then sought pre-application advice from the authority and met with officers in April 2022, following which revised plans were submitted and formal pre-application advice was issued by the authority in June 2022. The claimant also carried out pre-application consultation with stakeholders and compiled a consultation report

dated August 2022 setting out the scope and results of that consultation. The scheme was amended following those results and in particular an area to the north of the scheme was removed because of its potential to contain archaeological remains.

## The section 62A application

14. The claimant decided to make an application directly to the Secretary of State rather than to the authority, which it did at the beginning of October, but sought no further pre-application advice, including from the Planning Inspectorate (PINS) who dealt with the application on behalf of the Secretary of State. Later that month PINS issued a screening direction under the EIA Regulations, which stated:

"On the basis of the information provided, the Secretary of State considers that the Proposed Development has the potential to give rise to significant visual effects and significant cumulative effects including those on the local landscape through an increase in the amount of electrical infrastructure within the locality."

- In February 2023 the claimant submitted an environmental statement (ES) to the 15. Secretary of State and notice of that under regulation 20(2) of the EIA Regulations was given shortly afterwards stating that written representations about the ES and the application could be made to the Secretary of State from 9 February 2023 until 20 March 2023. The 2013 Order and the 2013 Regulations set out what must be taken into account in determining the application, as referred to above. During that period over 150 statutory consultees and interested parties responded and their representations were put on the PINS website and a linked second PINS website on a rolling basis. Many of them only appeared on the websites after 20 March 2023. On that day in correspondence with the claimant's consultants it was noted by PINS from a phone call to one of its officials that the claimant intended to contact statutory consultees. It was indicated that PINS did not wish to be copied into any correspondence, but that if the claimant or any consultee wished to provide information as to the final outcome of any such discussions, any such requests would be considered in accordance with the Rules and Regulations and in line with common practice to ensure fair, open and impartial consideration of the case. The claimant says that was an indication that it was open for it to provide such information.
- 16. On 20 February 2023 a consultation response from ECC's archaeologist was received. That referred to the geophysical survey undertaken in March 2022 and its recommendations relating to those areas to be removed from the scheme and those which would require a programme of targeted archaeological evaluation to identify the significance of these non-designated heritage assets as defined in paragraph 194 of the Framework. The response noted that no further discussions have been undertaken and stated:

"The applicant should be required to conduct a field evaluation comprising targeted trial trenching to establish the nature and complexity of the surviving archaeological assets identified in the geophysical survey. The significance of the moated sited identified needs to be established pre-determination therefore this should be undertaken prior to a planning decision being made."

- 17. On 23 February HE provided its response, in which it noted that of ECC's archaeologist and the concerns about the lack of, and need for, targeted trial-trenching evaluation in advance of the planning decision, in order to assess the nature and complexity of non-designated archaeological remains within the application site. HE continued that they considered it best practice to identify whether any important remains are present that could preclude or modify the proposed development. This approach is proportionate and justified in accordance with Framework paragraphs 194 and 195 and this is consistent with their advice relating to the previous application.
- 18. Some two weeks later the claimant contacted HE for the first time in the section 62A application, who responded the same day offering dates for a site visit. One of those dates was accepted by the claimant some 11 days later and HE carried out a site visit on that date, 14 April.
- 19. The representation period ended on 20 March and some four days later PINS confirmed in writing that the claimant's application would be determined on the basis of written representations rather than at a hearing and that the target date for the decision to be made was 1 June 2023. On 28 March the claimant's solicitors responded as follows:

"We are in receipt of the representations received during the consultation period for the Application and await a complete suite of documents from Protect the Pelhams in respect of its written representation. Once the outstanding documents have been received, the Applicant will respond to the written representations accordingly. The Applicant is also actively engaging with Uttlesford District Council to agree a Schedule of Conditions, which it is anticipated shall be provided together with the Applicant's response to the written representations received."

20. The next day PINS wrote again as follows, referring to the 2013 Order and the 2013 Regulations:

"There is no requirement or provision within the Regulations/Rules (referred to in our letter of 24 March) for the Applicant to respond to representations made. It is unclear why the Applicant is engaging with the designated authority to agree a schedule of conditions when these have not been sought. It is open to parties to seek to submit further information or representations after the period has closed. However, it is open to the Inspector as the appointed person to determine whether or not they are accepted, and if so due process is followed as per the Rules/Regulations/Order."

21. Almost four weeks later, on 27 April, the claimant's solicitor forwarded what was termed a rebuttal statement under cover of an email as follows:

"On behalf of Low Carbon Solar Park 6 Limited (the "Applicant") please find attached the Applicant's response to the written representations, which has been prepared in order to assist the Inspector in the determination of the Application by clarifying matters raised in consultation responses. The attached includes a response to the technical and legal submissions and an update following discussions with the Council. It does not include new information not already in the public domain and before the Inspector."

- 22. The rebuttal statement comprised 15 pages and 80 pages of appendices. It contained technical evidence in response to detailed and technical objections by consultees and interested parties, including those objections which had been prepared or informed by professionals or experts. This covered various topics including need and potential benefits, character and appearance of the area, landscape and visual, heritage assets both in terms of setting and archaeology, best and most versatile agricultural land, highway safety, biodiversity, noise, planning obligations, conditions, and planning balance.
- 23. Of particular relevance in the present challenge are objections in relation to archaeological heritage, which emphasised that without trial trenches it was not possible to know what archaeological assets lay below ground at the application site, a point which as part of its submissions in the present challenge the claimant says had not been raised before.
- 24. The claimant sought to deal in the rebuttal with the many points raised by consultees and interested parties from ECC, HE and a Dr Hoggett on behalf of interested parties, in particular on the issue of underground archaeological assets. In respect of such assets the rebuttal in appendix 7 stated that the uncertainty as to the significance of these is immaterial because an above-ground foundation design for the relevant parts of the site could ensure that there would be no harm to such assets, and a condition requiring approval of final site layout would mean that areas of potential assets could be avoided. Accordingly the requirement in the Framework as to the identification of the significance of such assets was inapplicable. It was also stated that post-determination trial trenching would inform a detailed mitigation strategy involving above-ground foundations for areas of archaeological significance, or alternatively archaeological recording, or exclusion of panels.

## 25. On 11 May PINS wrote again, as follows:

"Thank you for sending email below with attached documents. We note that this was not sought by the [Inspector] and has been submitted after the close of the Representation period on 20 March 2023. The [2013 Regulations] and Article 6(2)(b) states 'When making his determination, the inspector – may disregard any representations or information received after the end of the representation period.' To that end, the Inspector, as the appointed person, has determined to disregard this information."

26. No further reasoning was then provided as to why that determination was made. In the course of these proceedings the Secretary of State has filed evidence, which the claimant makes submissions as to weight rather than admissibility, to the effect that the inspector had already drafted his decision notice, which is borne out by the fact that the notice was also issued 11 May. It was also asserted that the inspector had prebooked annual leave thereafter.

#### The decision notice

- 27. The inspector's decision notice deals with each of the issues, including those summarised in paragraph 9 above. The evidence regarding archaeological assets was dealt with in [37]-[39]:
  - "37. Paragraph 194 of the Framework sets out that where there is potential for archaeological interest on sites, an appropriate desk-based assessment and, where necessary, a field evaluation should be undertaken. Footnote 68 of the Framework sets out that 'Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.'
  - 38. Significant archaeological remains from Iron Age to Roman dates and a moated enclosure and ditch-like anomalies from geographical survey are identified on the site. These are located in the northern and western parts of the application site. The applicant's heritage expert indicates that 'The majority of moated sites served as prestigious aristocratic and noble residences with the provision of a moat was intended as a status symbol. They commonly consist of wide ditches which are often water-filled, which partly or completely enclose an 'island' of dry ground.
  - 39. A metal detector survey was undertaken in the mid-2000s, but only on part of the northern end of the site, and there have been finds of coins from the early first millennium. On this basis, the Applicant considers that the potential for significant archaeological remains of Iron Age to Roman date within the site is moderate to high. They go on to consider that there are around 6,000 moated sites known within England, and the two potential enclosures identified within the application site, and contained within areas earmarked for development, are not scheduled like others found nearby with the visible remains are barely perceptible above ground. They should, therefore, be considered as non-designated heritage assets rather than as commensurate with Scheduled Monuments."
- 28. The inspector then dealt with the consultation responses from ECC and HE in [40] and [41]:

- "40. Place Services, Essex County Council -Specialist Archaeological Advice dated 20 February 2022 set out that significance of the remains of the moated enclosure have not yet been ascertained. They recommend that trial trenching evaluation is undertaken in advance of a planning decisions. Historic England note the above comments and indicate that it is best practice in terms of the assessment of archaeological remains to identify whether any important remains are present that could preclude or modify the proposed development.
- 41. With a lack of trial trenching at the application site it is not possible to ascertain the significance of buried archaeological remains. In such circumstances, the decision-maker is unable to undertake the balancing exercise set out at Paragraph 202 of the Framework (or Paragraph 201 if substantial harm).
- 29. The inspector's conclusion on the responses is at [42] to [44]:
  - "42. Clearly there is an incomplete picture in the evidence before me. The geophysical survey has found evidence of Romano-British enclosed structures; yet it is unclear whether there is any discernible evidence as to what these are and what other archaeology remains. Whilst there has been some metal detector surveying these were limited to the northern part of the site and took place some time ago. My role is to consider what is reasonable and proportionate based upon the available evidence before me. Despite evaluation carried out to date, I cannot be assured of the specific nature or significance of the potential buried archaeological remains.
  - 43. An understanding of the significance of any heritage asset is the starting point for determining any mitigation, and therefore I am unable to assess whether the mitigation proposed would be appropriate. Similarly, I cannot be certain of the potential harm that may result to the archaeological interest from the proposal, for example through the siting of solar arrays and the groundworks required.
  - 44. The heritage asset might have archaeological interest which could be unlocked through further field evaluation which would enable a greater understanding of any remains and their wider context. On this basis, and given that the significance of the potential remains could be of local and potentially regional importance (or greater if associated with the nearby Scheduled Monuments), I find that the approach suggested by Place Services and endorsed by Historic England is proportionate to the potential asset's importance and no more than is sufficient to understand the potential impact of the proposal. This approach is consistent with Paragraph 194 of the Framework.

- 30. At [45] the inspector said that he did not consider that the imposition of a planning condition would provide adequate mitigation for the safeguarding of what amounts to a non-designated heritage asset, and observed that what he termed the affected land is in close proximity to land that has known above ground archaeological remains which are afforded the highest levels of protection as scheduled monuments.
- 31. His conclusions were set out in the three paragraphs following:
  - "46. After careful consideration of the archaeological matters arising in this instance the evidence remains incomplete. I therefore conclude that the application fails to provide sufficient evidence regarding potential archaeological remains or features of interest, such that I cannot be assured that material harm to archaeological remains would not result.
  - 47. Accordingly, the application would fail to accord with Policy ENV4 of the LP, which, amongst other aims, seeks to ensure that in situations where there are grounds for believing that sites, monuments or their settings would be affected developers will be required to arrange for an archaeological field assessment to be carried out before the planning application can be determined thus enabling an informed and reasonable planning decision to be made. In circumstances where preservation is not possible or feasible, then development will not be permitted until satisfactory provision has been made for a programme of archaeological investigation and recording prior to commencement of the development. This policy requires an approach to the conservation of archaeological remains that is consistent with the Overarching National Policy Statement for Energy (EN-1) July 2011.
  - 48. The proposal would also conflict with Section 16: Conserving and enhancing the historic environment of the Framework and in particular Paragraphs 194 and 200 (and footnote 68) which, amongst other aims, set out that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to assets of the highest significance, notably scheduled monuments should be wholly exceptional."
- 32. He drew together his conclusion in respect of each of the issues under a heading "Planning balance and Conclusions" in [76]-[78]:
  - "76. The proposal would clearly result in wider benefits including the moderate contribution to the local and national aspirations to transition to a low carbon future, the significant benefit arising from the renewable energy creation and future energy mix, the modest weight to socio-economic benefits and the modest benefits to ecology and biodiversity.

- 77. However, these fail to negate the harms identified to character and appearance, landscape and visual matters, the settings of designated heritage assets, archaeological remains, loss of BMVAL, highway safety, biodiversity and noise. The benefits in this case are clearly outweighed by the harms identified.
- 78. Accordingly, the proposed development would not accord with the adopted development plan when considered as a whole and there are no material considerations which indicate a decision otherwise than in accordance with it. It would also conflict with significant parts of national planning policy identified, including those principally contained within the Framework.
- 33. Accordingly, planning permission was refused.

Case law

34. *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531 was a case involving the right of a prisoner to make written representations as to the period that a prisoner should serve. At 560D, Lord Mustill said this:

"What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interest's fairness will very often require that he is informed of the gist of the case which he has to answer."

- 35. The principle has been applied in a variety of different fields and it has been emphasised that fairness is a question for the court, see *R* (Medway Council) v Secretary of State for Transport, Environment and the Regions [2002] EWHC 2516 (Admin) per Maurice Kay J (as he then was) at [27], [28] and [32].
- 36. In the planning field the Court of Appeal in *R (Ashley) v SSCLG* [2012] EWCA Civ 559 dealt with the Secretary of State's adopted procedural guidance for planning appeals. Pill LJ at [31] said this:

"There are circumstances in which, to avoid unfairness, representations by interested parties outside the six-week period will be appropriate. The view I have formed that in the circumstances the procedure followed was unfair is given further weight, in my view, by reference to the Guidance which has a potential for unfairness. The contents of the Guidance may have influenced the Inspectorate when failing to take action in a situation where written expert evidence had for the first time been submitted by the appellant on the last day of the six week period. No action was taken."

- 37. In Hopkins Developments Ltd v SSCLG [2014] EWCA Civ 470 the Court of Appeal considered fairness in the context of planning inquiries. The following principles were summarised: (a) a party to such an inquiry was entitled to know the case he had to meet, and had to have a reasonable opportunity to adduce evidence and make submissions about it; (b) procedural unfairness materially prejudicing a party might justify quashing the inspector's decision; (c) the rules applicable to such inquiries were designed to assist in promoting efficiency and ensuring that there was no procedural unfairness; (d) statements given under the rules identified what the inspector regarded as the main issues at that time but not oblige her to disregard evidence on other issues or give the parties regular updates about her thinking; (e) the inspector would consider any significant issues raised by third parties, even if they were not in dispute between the main parties. The main parties had to deal with any such issues unless expressly told that they need not do so; (f) if a main party resiled from a matter agreed in a statement of common ground, the other party had to be given a reasonable opportunity to deal with that matter.
- 38. The court found in that case that there was no procedural unfairness in relation to either issues of sustainability or of character/appearance which the parties were, or ought to have, been aware were part of the case which had to be met and had a reasonable opportunity to address them. Jackson LJ at [62] made the point that the relevant procedural codes are designed to assist in achieving the relevant objective, but were not a complete code for achieving procedural fairness. Accordingly, if a significant issue emerges during the determination of an application or appeal, the inspector must give the other party a reasonable opportunity to deal with the new issue which has emerged.
- 39. The claimant also submits that its rebuttal was obviously a material consideration which the inspector ought of taken into account because there is a real possibility that he would reach a different conclusion if he did so or would have tipped the balance to some extent, one way or the other, see *R* (*Watson*) *v Richmond Upon Thames LBC* [2013] EWCA Civ 513 per Richards LJ at [28].

40. It is for the party seeking to uphold a decision to establish that a decision maker would have been bound to come to precisely the same conclusion on valid grounds; see *Simplex (GE) Holdings Ltd v Environment Secretary* [2017] PTSR 1041, see Purchas LJ at page 1059E. The test is a stringent one; see *SSCLG v South Gloucestershire Council* [2016] EWCA Civ 74 per Lindblom LJ at [25]

## The claimant's submissions

- 41. The challenge in the present case is put on the basis that the inspector refused to take into account the rebuttal and thus substantially prejudiced the claimant by acting procedurally unfairly and failing to have regard to an obviously material consideration. Consultees and interested parties had 38 days to review the application documents and formulate detailed and technical objections to the scheme. However, the claimant was deprived of the opportunity to reply and rebut those representations and evidence, which also had to be technical and detailed, and accordingly did not have a reasonable opportunity to deal with new issues which had emerged.
- 42. Mr Humphries KC, for the claimant, accepts that the 2013 Order and the 2013 Regulations prescribes the procedure to be followed on a section 62A application, but emphasises that there are in-built discretionary safeguards designed to provide decision-makers with sufficient discretion to ensure that the procedure is operated fairly.
- 43. Under regulation 6(2)(b) of the 2013 Regulations the decision-maker has a discretion to admit further evidence and/or representations after the end of the representation period so as to take into account all obviously material considerations, and to ensure procedural fairness.
- 44. The argument continues that there may well be situations in which it would be necessary out of fairness for a decision-maker to receive material not submitted within the relatively short representation period of up to 30 days. The requirement under article 21 of the 2013 Order that all representations should be published on a website, which is not normally a common law requirement, clearly shows that fairness may require a response. Such a right of reply would follow on an appeal from a refusal by a local planning authority to grant permission. There is no right of appeal from the decision of an inspector under section 62A.
- 45. Mr Humphries made clear that the claimant's entitlement, as a matter of procedural fairness, to rebut the consultation objections arose not because those materials raised entirely new and unforeseeable points (though he submits some were novel, such as the trial trenching), but because of the detailed and technical nature of those objections which the claimant could not have rebutted before they were made.

## The Secretary of State's submissions

46. In response, Ms Blackmore for the Secretary of State emphasises that the procedure under section 62A is designed to promote transparent and faster determination of planning applications where a local planning authority has been designated as not performing its functions in that regard. That is why applications and responses are required to be published, time scales are set, and no right of reply is given but only a discretion to allow reply. To this end, applicants are strongly encouraged, by the

guidance, to front load applications. Section 62A gives a right to apply for faster decision-making by an inspector where an authority has been designated, but also a burden on applicants to find out what factors may weigh against their interests. If an applicant does not do so, or chooses not to do so effectively (for example as in this case, by not properly consulting with statutory consultees), that applicant takes the risk that rebuttal evidence outside the representation period will not be considered. Anyone may apply to make a late representation, not just applicants. It does not need to be connected to consultation responses.

- 47. She also submits that the claimant was aware of the gist of opposition by the objections received in respect of the previous application and the refusal of that application. The requirement in the Framework to identify and describe the significance of affected assets is well established policy. Appendix 7 of the claimant's rebuttal does not put forward new evidence for its assertion that there would be no harm to below ground heritage assets by development taking place. The claimant ignores the burden on consultees or interested persons of being reconsulted where the rebuttal is admitted, and ignores the impact on other work.
- 48. Further, it is submitted, the email of 24 March from PINS did not suggest that the door was open to the claimant to make further representation of whatever length about whatever point at whatever stage, but related only to an update as to the final outcome of any further discussions. There was no assessment, for example, of the extent of the non-designated heritage area, the landscape impacts of an above-ground scheme or altered layout, or the impacts on the setting of known heritage assets including scheduled monuments.

## Discussion and conclusions

- 49. In my judgment, other inspectors may well have admitted the claimant's rebuttal, but that is not the test. The question is whether the inspector's refusal to do so in the particular circumstances of this case gave rise to procedural unfairness. In my judgment a key factor in determining that question is the requirement in the Framework for the significance of assets to be identified. As the inspector noted at [43], an understanding of the significance of heritage assets is the starting point for determining any mitigation, and it is not appropriate to assess mitigation without that understanding. To approach the matter from the direction which the claimant does, by saying that the requirement to understand such significance is inapplicable because mitigation means that there is no harm, is, in my judgment, to approach the matter the wrong way round. There needs to be an understanding of significance in order to assess whether any mitigation appropriately addresses any harm. It is clear that the claimant did not undertake any evaluations to identify the significance of the historical assets revealed in the March 2022 geophysical survey, seemingly because it took the view that such a requirement was inapplicable where mitigation could avoid harm. In my judgment, the view was in error.
- 50. I am satisfied that the claimant understood the gist of the objections of ECC and HE before making the section 62A application, from the previous application. Although ECC's raised the possibility of surface mounting, nevertheless the recommendation was to undertake a targeted evaluation to define the significance of the potential moat and other features and the other areas identified in the survey. The scheme was amended to exclude some areas of the site, but no targeted evaluation had been made

in respect of the remaining areas. ECC's objection then made clear that it was following such evaluation that appropriate discussion could take place regarding mitigation.

- 51. ECC's objection to the present application, emphasised that there had been no further discussions since its previous objection and that a field evaluation was needed, including of the moated site, before the application was determined. That was made a month before the end of the representation period. That issue was not particularly technical or detailed. It was a matter of policy as to whether such evaluation should be carried out pre-determination as ECC recommended, or, as the claimant submits, after determination. In my judgment the claimant had an adequate opportunity to respond before the end of that period, and certainly before another month elapsed.
- 52. In my judgment the PINS correspondence properly dealt initially with an update on the claimant's proposed consultations and thereafter made clear that any representations received after the end of the representation period would be the subject of the inspector's discretion whether or not to admit them.
- 53. Accordingly, it has not been shown that there was the claimed procedural unfairness and the claim fails. Were it necessary to apply *Simplex*, in my judgment the inspector would have come to the same conclusion had he taken account of the rebuttal statement. As I have already indicated, that approached matters the wrong way round, and does not meet the point that the significance of the assets had not been identified, without which, as the inspector concluded, it was not possible for him to carry out the balancing exercise which the Framework requires.
- 54. I am grateful to counsel for their submissions. They helpfully indicated that any consequential matters which cannot be agreed can be determined on the basis of written submissions. Any such submissions, together with a draft order agreed as far as possible, should be filed within 14 days of hand down of this judgment.



## **Appendix C Information Papers**



# Phase 2b Western Leg Information Paper C3: Land acquisition policy

This paper outlines how landowners will be compensated for the acquisition of their land required for the construction and operation of the Proposed Scheme.

It will be of particular interest to those potentially affected by the Government's proposals for high speed rail.

This paper was prepared in relation to the promotion of the High Speed Rail (Crewe - Manchester) Bill. Content will be maintained and updated as considered appropriate during the passage of the Bill.

If you have any queries about this paper or about how it might apply to you, please contact the HS2 Helpdesk in the first instance.

## The Helpdesk can be contacted:

by email: <u>HS2enquiries@hs2.org.uk</u>

**by phone (24hrs)**: 08081 434 434

08081 456 472 (minicom)

or by post: High Speed Two (HS2) Limited

2 Snowhill, Queensway

Birmingham

B4 6GA

Version 2.0

Last updated: 21 June 2022

C3: Land acquisition policy Version 2

Last update: 21 June 2022

## 1 Introduction

- 1.1 High Speed Two (HS2) is the Government's scheme for a new, high speed north-south railway, which is being taken forward in a number of phases. Phase One will connect London with Birmingham and the West Midlands. Phase 2a will extend the route from the West Midlands to Crewe. The Phase 2b Western Leg will connect Crewe to Manchester. As set out in the Integrated Rail Plan, published in November 2021, HS2 East is proposed to deliver a new high speed line from the West Midlands to East Midlands Parkway.
- 1.2 HS2 Ltd is the non-departmental public body responsible for developing and promoting these proposals. The company works under the terms of a Development Agreement entered into with the Secretary of State for Transport.
- 1.3 The construction and operation of Phase One of HS2 is authorised by the High Speed Rail (London West Midlands) Act 2017 and Phase 2a by the High Speed Rail (West Midlands Crewe) Act 2021.
- 1.4 In January 2022, the Government introduced a hybrid Bill to Parliament (hereafter referred to as 'the Bill'), to seek powers for the construction and operation of the Phase 2b Western Leg (the Proposed Scheme), which is called the High Speed Rail (Crewe Manchester) Bill. The Proposed Scheme comprises the Phase 2b Western Leg from Crewe to Manchester and several off-route works. It also facilitates the delivery of Northern Powerhouse Rail by providing the Crewe Northern Connection and junctions and other infrastructure to be used in future schemes.
- 1.5 The work to produce the Bill includes an Equalities Impact Assessment and an Environmental Impact Assessment (EIA), the results of which are reported in an Environmental Statement (ES) submitted alongside the Bill. The Secretary of State has also published draft Environmental Minimum Requirements (EMRs), which set out the environmental and sustainability commitments that will be observed in the construction of the Proposed

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Scheme. For more information on the EMRs please see Information Paper E1: Control of environmental impacts.

- 1.6 The Secretary of State for Transport is the Promoter of the Bill through Parliament. The Promoter will also appoint a body responsible for delivering the Proposed Scheme under the powers granted by the Bill. This body is known as the 'nominated undertaker'. There may be more than one nominated undertaker. However, any and all nominated undertakers will be bound by the obligations contained in the Bill, the policies established in the EMRs and any commitments provided in the information papers.
- 1.7 These information papers have been produced to explain the commitments made in the Bill and the EMRs and how they will be applied to the design and construction of the Proposed Scheme. They also provide information about the Proposed Scheme itself, the powers contained in the Bill and how particular decisions about the Proposed Scheme have been reached.

## 2 Overview

2.1 This information paper outlines how landowners will be compensated for the acquisition of their land required for the construction and operation of the Proposed Scheme.

## 3 General approach

- 3.1 This policy sets out the basis upon which the Secretary of State will acquire land and property for construction and operation of the Proposed Scheme.
- The Bill seeks powers for the compulsory acquisition of land within limits.

  These are intended to ensure sufficient flexibility in the detailed design of the Proposed Scheme.
- 3.3 The Bill generally includes full land acquisition powers. However, in any individual case, the exercise of these powers will operate on the basis that the Secretary of State will acquire no greater amount of land than

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appears to him will be reasonably required following the detailed design of the Proposed Scheme. It is likely to be the case that detailed design will not be completed at the time that possession is required of the land and that this may mean that more land is acquired than is necessary. In these cases, the Land Disposal Policy will apply, and the surplus land may be offered back to the original owner. Further details about this are contained in information papers C2: Rural landowners and occupiers guide and C6: Disposal of surplus land.

- 3.4 If it is practicable to acquire a smaller area of land without compromising the Secretary of State's ability to secure the construction and implementation of the Proposed Scheme in a timely and economic manner, and it becomes clear that not all the land within limits is required, the Secretary of State will not generally seek to acquire this land and will be prepared to give necessary assurances to the landowners in question.
- 3.5 Landowners affected by the exercise of these compulsory powers of acquisition will be compensated according to the Compensation Code. The 'Compensation Code' is a collective term for the principles deriving from Acts of Parliament and case law, relating to compensation for compulsory acquisition. Its general purpose is to provide fair compensation for a person whose land has been compulsorily taken. Further details about the Compensation Code are contained in Information Paper C8: Compensation code for compulsory purchase.
- 3.6 Where applicable, the compensation will be the un-blighted market value of the land acquired (assuming it is sold by a willing seller) plus statutory loss payments, disturbance (including stamp duty in relation to replacement property), diminution in value of any retained land, and other losses arising as a direct and reasonable consequence of the acquisition.
- 3.7 In addition to authorising the acquisition of land within the limits in connection with the railway, the Bill also authorises the making of compulsory purchase orders, in accordance with the normal process that

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applies to the making of such orders, to acquire land for relocation purposes. Further details about compulsory purchase powers for business relocations are contained in Information Paper C7: Business relocation.

## 4 Worksites and other temporary land requirements

- 4.1 The Bill contains permanent acquisition powers to acquire the freehold interests in worksites due to the length of time they will be occupied.
- 4.2 Worksites are often formed from a number of different land parcels in different ownership and fall into two categories:
  - Where the nature of the site or part of the site will not materially change, and no new railway works will be constructed on the site. These sites can often be returned to their original use. In these cases, if the landowner wishes, and it is practicable and economic for the nominated undertaker to do so, and at no greater burden to the public purse, they will normally be willing to discuss with the owner the temporary use of that land with each request considered on a case by case basis. When considering whether it is economic to do so, the Secretary of State may require the compensation for the temporary occupation of land to be agreed prior to exercising powers under the Bill as enacted; and
  - Where the nature of the site will materially change (e.g. through demolition of existing buildings or construction of railway works on the site) or where land or property is planned to be developed, the freehold interest will be acquired.
- 4.3 In respect of land that is and will remain in long term agricultural or forestry use only, the Secretary of State will normally consider it economic to exercise temporary possession powers where practicable. There are some exceptions to this policy for more details, see the Farmers and Growers Guide.

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4.4 In considering the question of material change, the Secretary of State will apply the approach set out in the Crichel Down Rules.

4.5 Once it is no longer required for construction, worksite or other use, land that has been acquired for that purpose may be offered back to the original owner in line with the Land Disposal Policy. Further details about this are contained in Information Paper C6: Disposal of surplus land.

## **5** More information

5.1 More detail on the Bill and related documents can be found at <a href="https://www.gov.uk/hs2-phase2b-crewe-manchester">www.gov.uk/hs2-phase2b-crewe-manchester</a>.

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## References

Farmers and Growers Guide

https://www.gov.uk/government/publications/hs2-guide-for-farmers-and-growers

Crichel Down Rules

www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance

Property schemes

www.gov.uk/claim-compensation-if-affected-by-hs2



## Appendix D HS2 policy for disposal of surplus land



## Disposal of surplus land

This factsheet describes the policy expected to be adopted for providing landowners with the opportunity to re-acquire a beneficial interest in land that has been compulsorily purchased from them in order to carry out the works required for the Proposed Scheme, where that land is not required for the operation of the Proposed Scheme.

Last updated: September 2020

## 1 Introduction

- 1.1.1 High Speed Two (HS2) is the Government's proposal for a new, high speed north-south railway. The proposal is being taken forward in phases. Phase One will connect London with Birmingham and the West Midlands. Phase 2a will extend the route to Crewe. The Western Leg of Phase 2b comprises an extension of the network to Manchester and a connection to the West Coast Main Line at Golborne, and is referred to as the Western Leg hybrid Bill. The Eastern Leg of Phase 2b currently comprises an extension of the network from the West Midlands through the East Midlands to Leeds.
- 1.1.2 HS2 Ltd is the non-departmental public body responsible for developing and promoting these proposals. The company works to a Development Agreement made with the Secretary of State for Transport.
- 1.1.3 The construction and operation of Phase One of HS2 is authorised by the High Speed Rail (London West Midlands) Act (2017). In July 2017, the Government introduced a hybrid Bill to Parliament to seek powers for the construction and operation of Phase 2a.
- 1.1.1 In February 2020, the Government announced its intention to draw up an Integrated Rail Plan. This will recommend a way forward on scoping, phasing and sequencing the delivery of HS2 Phase 2b, Northern Powerhouse Rail, Midlands Rail Hub and other proposed rail investments across the north. At the same time, the Government asked HS2 Ltd to prepare the Western Leg hybrid Bill, provided it does not prejudge any recommendations or decisions that will be taken in this plan, which will be published by the end of the year.
- 1.1.2 It is intended to deposit a Western Leg hybrid Bill seeking powers to construct and operate this phase in Parliament in early 2022 or sooner if possible (the Proposed Scheme). The work to produce the Bill will include an Environmental Impact Assessment (EIA), the results of which will then be reported in an Environmental Statement (ES). The ES would be submitted alongside the Bill when it is introduced to Parliament. As was the case with Phase One and Phase 2a, when the Bill is introduced to Parliament the Secretary of State will also publish draft Environmental Minimum Requirements (EMRs). The EMRs will set out the environmental and sustainability commitments that will be observed in the construction of the Proposed Scheme.
- 1.1.3 A series of information papers were produced for the Phase One and Phase 2a hybrid Bills, explaining the commitments made in those Bills and EMRs. It is the Secretary of State's intention to follow a similar process for the Western Leg Bill. These information papers will be used to provide information about the Proposed Scheme itself, the powers contained in the Bill and how decisions on

the Proposed Scheme have been reached. It is currently proposed that these information papers for the Western Leg of Phase 2b will be published at the time the Bill is introduced in Parliament.

- 1.1.4 The Secretary of State for Transport will be 'the Promoter' of the Western Leg Bill. The Promoter will also eventually appoint a body responsible for delivering the Proposed Scheme under the powers to be granted by the Bill. This body will be known as the 'nominated undertaker'. There may well be more than one nominated undertaker. However, any and all nominated undertakers will be bound by the obligations contained in the Bill, the policies established in the Western Leg EMRs and any commitments provided in the Western Leg information papers.
- 1.1.5 These Western Leg factsheets have been produced to provide information on the emerging proposals for measures to manage the design process for the Proposed Scheme and to control impacts which may arise from the construction and operation of the Proposed Scheme. These measures may then be applied to the Western Leg as commitments made through the eventual Bill, EMRs or information papers.

## 2 Overview

2.1.1 This factsheet describes the policy expected to be adopted for providing landowners with the opportunity to re-acquire a beneficial interest in land that has been compulsorily purchased from them in order to carry out the works required for the Proposed Scheme, where that land is not required for the operation of the Proposed Scheme.

## 3 Land disposal policy

- 3.1.1 Virtually all the land compulsorily acquired for the Proposed Scheme would be used permanently for the construction and operation of the new railway. However, there may be some circumstances where land compulsorily acquired becomes surplus to requirements after construction works are complete. In those cases, landowners may be offered the opportunity to buy back land, at market value, that has been compulsorily purchased from them.
- 3.1.2 In these circumstances, the offer to re-sell land would be in accordance with, and subject to:
  - The "Crichel Down Rules" established policy in the UK for the return of compulsorily purchased land to its former owners, their successors or sitting tenants as the case may be, which are described briefly below in section 4; and

- The Guiding Principles set out below for HS2.
- 3.1.3 Nothing in this proposed policy is intended to affect the rights to compensation of owners of an interest in land that is compulsorily acquired for the Proposed Scheme.
- 3.1.4 This proposed policy would apply the Crichel Down Rules to property acquired under compulsory purchase powers and under statutory blight including express purchase. The Crichel Down Rules do not apply to:
  - Property purchased by private treaty agreement (where the power to acquire the land under compulsory purchase did not exist at the time of acquisition);
  - Property purchased under the non-statutory HS2 Property Schemes (save where the property owner was also entitled to serve a blight notice at the time of acquisition).
- 3.1.5 In these circumstances any surplus land or property would be offered for sale on the open market, subject to the Government's policy on this at the time.

## 4 General approach

- 4.1.1 Where any land has been acquired compulsorily for the construction of the Proposed Scheme and is no longer required for the satisfactory completion of the works, or not required in connection with the operation of the Proposed Scheme, it would be sold subject to the Crichel Down Rules.
- 4.1.2 The Crichel Down Rules have been developed for over half a century and have been endorsed by previous Governments. They provide for the circumstances in which land acquired by or under threat of compulsion or statutory blight, but no longer required for public purposes, will be offered back to the former owners, their successors or sitting tenants as the case may be.
- 4.1.3 The Crichel Down Rules are set out in the Ministry of Housing, Communities and Local Government Guidance on Compulsory Purchase Process and The Crichel Down Rules (see link at 8.1.2). The basic principle behind the Crichel Down Rules is that where Government wishes to dispose of land to which the Rules apply, former owners will, as a general rule, be given first opportunity to repurchase the land at current market value, provided it has not materially changed in character since acquisition.
- 4.1.4 It should be noted that the Crichel Down Rules are recommended to statutory bodies but it is recognised that an authority's approach to the disposal of surplus land will depend on their particular function and circumstances. It

should also be noted that the requirement to offer land back is not unqualified but subject to limitations and exceptions set out in the Crichel Down Rules themselves. Any land disposal under Crichel Down Rules by the Secretary of State would be subject to changes to the Crichel Down Rules which might be made in the future.

- 4.1.5 In particular, by virtue of Rule 10, there would be no obligation to offer land back to the former owner where the land has materially changed in character. Examples of where this may occur are when works for the Proposed Scheme have involved substantial alterations to existing buildings to change their character or where new works or buildings have been erected on open land. When deciding whether works have materially altered the character of the land, a consideration which would be taken into account would be the likely cost of restoring the land back to its former use.
- 4.1.6 Works for the Proposed Scheme, such as at working sites, require the demolition of existing buildings and the construction of the railways works. Following completion of the railway works some of these sites (or parts of former sites) may become available for disposal; in such circumstances, it is unlikely the Crichel Down Rules would require an offer back, as there would have been a material change in character of the land.

## **5** Guiding principles

- 5.1.1 Where the Secretary of State intends to dispose of an interest in a site to which the Crichel Down Rules apply, holders of Qualifying Interests (see section 6) would, subject to the principles below, be given first opportunity to acquire that interest at the market value before it is offered to the general market.
- 5.1.2 The Secretary of State would determine the nature of the interest to be offered and the terms of any transfer. In so doing he would have regard to the following principles:
  - the proper completion and operation in the public interest of the works as authorised by the Bill;
  - the paramount requirement to protect the future safe and efficient operation of the railway;
  - the need to fulfil any undertaking given by the Secretary of State in respect of the Bill or comply with any legal obligations to which he is subject;

- the need to secure in the public interest the carrying out of development or redevelopment associated with the works, in accordance with the planning, environmental and heritage considerations applicable to the sites affected; and
- the need for the land disposal to achieve the best value reasonably obtainable.
- 5.1.3 This proposed policy would seek to strike the right balance between ensuring the project is implemented successfully and protecting the principles of disposing of land no longer required for the Proposed Scheme.

## **6** Qualifying interests

- 6.1.1 The holders of the following "Qualifying Interests" may qualify for the offer back of an interest under the terms of this proposed policy:
  - former freeholders of the whole or part of a site; or
  - where the freeholder does not wish to buy back the site, a former leaseholder who had a lease of the property which had an unexpired term of more than 21 years at the time the property is being disposed of, might (at the discretion of the Secretary of State) be offered the freehold interest;
  - the successors of anyone who would have fallen into either of the above categories where, had the property not been acquired, the land interest would clearly have devolved upon those successors under a former owner's will; or
  - where there was fragmented ownership of their site at the date the property was acquired or occupied for railway works under the provisions of the proposed Western Leg Bill as enacted, a consortium of former owners who have indicated a wish to purchase the land collectively; and
  - in certain circumstances where a dwelling has a sitting tenant at the time
    of the proposed disposal, the freehold would first be offered to the
    sitting tenant. If the tenant declines to purchase the freehold it would
    then be offered to the former owner although this may be subject to the
    tenant's continued occupation. It should be noted however that this does
    not apply to agricultural units and only applies to certain types of tenancy
    agreement.

## 7 Exceptions

- 7.1.1 In the following circumstances, the Secretary of State might decide that the property should not be offered back under the Crichel Down Rules:
  - where the works have materially changed the character of the land since the acquisition. Examples might include:
    - where a building with land was originally compulsorily acquired for the Proposed Scheme and the building was demolished for incorporation of some, although not all of the land within the proposed railway, and some land becomes surplus;
    - where property has been compulsorily acquired under material detriment i.e. where only part of the land is required but the effect of the scheme is so material that the owner requires the Promoter to acquire all of the property;
  - to sites that, in the opinion of the Secretary of State, are of such a nature or so small or isolated that their sale would not be commercially worthwhile;
  - where agricultural land that has been severed is no longer capable of farming economically;
  - where it makes economic sense to pool the land with adjoining ownerships in a joint disposal;
  - where it is decided by the Secretary of State that all or part of the surplus land forming a site is needed for railway purposes or associated redevelopment, regeneration, or the relocation of a business affected by the Proposed Scheme, or it is required by a Railway Authority, Infrastructure Company, Operator or otherwise;
  - where former owners are not prepared to commit to provisions that protect the future safety and operation of the Proposed Scheme or any railway with which the Proposed Scheme interconnects both during construction and thereafter;
  - where the site is required for environmental mitigation, and where the former landowner is unwilling or unable to accommodate those requirements for recreation of community facilities or wildlife habitats;

- where planning consent has not been obtained by the Secretary of State
  at the time of disposal and the value of surplus land is so uncertain that
  clawback provisions would be insufficient to safeguard the public purse,
  and where competitive sale is advised by the Department for Transport`s
  professionally qualified valuer and specifically agreed by the Secretary of
  State;
- where holders of Qualifying Interests are not prepared to comply with the details of any undertakings given by the Secretary of State or nominated undertaker to planning authorities;
- where former owners are not prepared to pay the market value of the site or are not prepared to offer terms that the Secretary of State considers to represent best value having regard to all the circumstances; and,
- where the Secretary of State considers that in the public interest the land should be transferred to another statutory body with compulsory purchase powers.

## 8 More information

- 8.1.1 Further factsheets and details on the Proposed Scheme can be found at:
- 8.1.2 For more information on the Compensation Code and the Crichel Down Rules see:
  - https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance
- 8.1.3 This link also contains information on the Scottish Planning Circular 5 2011 on the Disposal of Surplus Land, which may be useful to those in Scotland.



# Appendix E Communication to Mr Baird from Carter Jonas 24 May 2024

## **Carter Jonas**

3 Royal Court Kings Worthy Winchester Hampshire SO23 3TW



24 May 2024

Sent via email -

Dear Mr Baird.

#### PROPOSED CABLE ROUTE IN RESPECT OF RAMPION 2 OFFSHORE WINDFARM PROJECT

I write further to our meeting on 12<sup>th</sup> March 2024 to provide you with an update on the matters we discussed. Please accept my apologies for the delayed response, I have had to collate responses from the project team on each point which I will deal with in turn below:

#### **Natural Regeneration Farming**

We discussed your intentions to farm your land for natural capital / Biodiversity Net Gain ("BNG") offsetting through natural regeneration and noted that easement document restricts the landowner from doing so through imposing a condition to maintain the vegetation and not to allow any natural regeneration (i.e. not to allow any trees to regenerate) thus preventing you from farming in this way.

Rampion's onshore consents manager Oliver Kirkham commented at the meeting that in principle Rampion could consider the potential for BNG to be offset along the length of the easement strip / cable corridor and that Rampion could pay you with credits for this, though this would need to be discussed further. We have been in contact with your consultants CLM and will be arranging a date to meet with them in June to discuss the BNG on your land and how those plans may align with the Rampion 2 project requirements.

#### **Trees**

Andrew (Thomas) raised a query in relation to whether hazel can be allowed to grow within the easement strip / cable corridor, and asked Rampion's engineer Richard Towner Roethe, what evidence Rampion have to substantiate the prohibition of planting trees in the easement strip / cable corridor.

Richard (Towner Roethe) explained at the meeting that Rampion are obligated to protect the cables as the presence of tree roots can put the effectiveness of the cables at risk, and Oliver (Kirkham) confirmed that the OFTO would be at risk of not being able to insure the cables with trees growing within the easement strip.

Oliver (Kirkham) subsequently emailed you, in an emailed dated 20<sup>th</sup> May 2024, setting out the detail of the technical requirement for the exclusion of planting new woodland or trees above installed export cables including details about the direct and indirect risks of physical damage and from root growth near power transmission cables.

Andrew (Thomas) responded to Oliver's (Kirkham) email, in an email dated 22<sup>nd</sup> May 2024, that Rampion's Outline Landscape and Ecology Management Plan ("OLEMP") (Section 4 – Landscape and Habitat Reinstatement) suggests that hawthorn, crab-apple, blackthorn, elder and hazel are acceptable to be planted anywhere, and stated that this conflicts with the proposed easement agreement which seeks to sterilise the strip of all trees.

Please note that Section 4 – Landscape and Habitat Reinstatement of the OLEMP only applies to the reinstatement of existing vegetation and does not include new planting of vegetation (trees or scrub) over the cable corridor that is currently used as agricultural (predominantly arable) farmland.

For the avoidance of doubt, no new planting (or natural regeneration) of trees or scrub over the easement strip / cable corridor is permitted, without the prior written consent in writing such consent not to be unreasonably withheld or delayed. The asset owner (Rampion Extension Development Limited, and later an OFTO) will be responsible for periodic survey and vegetation management of the cable easement strip as required.

Andrew (Thomas) sought confirmation that Rampion 2's right seeking to plant trees on the Grantor's Estate must not relate to Rampion 2's own BNG requirements, but for replacement planting only. I can confirm that this is correct. Any new planting beyond the reinstatement planting required to contribute towards Rampion 2's BNG obligations will be subject to separate negotiation. We are happy to discuss this further in the context of your BNG offer once we understand your BNG proposals in more detail.

#### **Temporary Site Compound Location**

In the meeting, you made it clear that you strongly oppose the location of the site compound and that Rampion had not considered alternative locations (off your land) properly.

Rampion requires three temporary construction compounds as bases to support the construction of the onshore cable corridor to reduce the distance travelled between the compounds and cable work sites, and another two to support the onshore substation works. This includes for logistics, preparing materials, equipment, maintenance, project management and to support mitigation works. Compounds must have sufficient space for the required purposes, be close to major roads, be outside of protected areas, be near the onshore cable corridor and key construction activities and be on level clear ground.

The temporary construction compounds have been located strategically to each serve a section of onshore cable route during construction. A temporary construction compound is best located near to a trunk road for ease of transport links, outside of designated areas, of sufficient size to fulfil its purpose and on flat land where possible to reduce the need for cut / fill.

The Climping construction compound is located in close proximity and linked to the onshore cable construction corridor to the East, it is also in close proximity to support the landfall works. Rampion considered an alternative compound site at Climping to the West of Church Lane prior to consultation but this was rejected due to the area overlapping with an approved outline application (CM/1/17/OUT for the erection of up to 300 dwellings and ancillary development). Other alternatives were considered in the area but the extent of Flood Zone 2 and 3, increased proximity to cultural heritage assets and residual capacity as a result of these constraints made these options unworkable for Rampion 2.

#### **Temporary Site Compound Consideration**

Andrew (Thomas) commented that on Rampion 1 the site compound fee was calculated on £0.40 per square metre per month and noted Rampion 2 were offering £0.50 per square metre per year, and that this was not subject to any RPI increase until the date of entry. You made it clear that you would only be willing to accept a commercial value for the site compound. Oliver (Kirkham) agreed that Rampion would review the basis of the site compound consideration.

I subsequently emailed you, on 20<sup>th</sup> May 2024, with a revised offer for the temporary site compound consideration. I can confirm that the size of the temporary site compound will equate to approx. 59,000 square metres (5.90 hectares (approx. 14.5 acres)). In addition, there are two HDD compounds which will equate in

total to approx. 24,000 square metres (2.40 hectares (approx. 6 acres)) resulting in a total area of land of 83,000 square metres (8.3 hectares (approx. 20 acres).

Rampion are currently offering a temporary site compound consideration of £0.50 per square metre per annum that equates to £41,500 per annum (payable annually in advance for the duration of the construction period). Crop loss and disturbance will be paid on top of this.

Alternatively, Rampion are prepared to offer a temporary site compound consideration of £0.70 per square metre per annum that equates to £58,100 per annum (payable annually in advance for the duration of the construction period), without the additional payments for crop loss and disturbance.

#### **Potential Land Contamination**

Following a discussion about your aspirations to develop the land (where the temporary site compound is cited) Andrew (Thomas) raised a concern about the land being contaminated during its use as a site compound. Richard (Towner Roethe) was able to confirm at the meeting that before and after baseline contamination surveys would be undertaken, and that strict industry practices are enforced to prevent any contamination of soil from compound activities. Richard (Towner Roethe) was also able to confirm that the site compound would be used for storing topsoil – that Rampion are unable to store in the floodplain – arising from the trenchless crossings. Any such soil that is suspected or found to be contaminated would be handled and stored appropriately to prevent migration of any contaminants (See Commitment C-143 in the Commitments Register [REP3-049 in the Examination Library]).

#### **Undertaking Works in the Easement Strip / Cable Corridor**

Andrew (Thomas) asked about the restrictions on raising and or lowering the levels of the land in the easement strip / cable corridor, as well as asking what costs may be borne from making an application for consent for any works. Andrew (Thomas) also asked what happens in the event of natural erosion of a surface and who would be liable for the maintenance.

I can confirm that any routine maintenance of surfaces within the easement strip / cable corridor will not require consent to be sought (for example, filling in potholes / making good the surface of an existing farm track). I can also confirm that the landowner would not be responsible / liable for natural erosion.

Raising or reducing levels would require prior written consent in writing such consent not to be unreasonably withheld or delayed, due to the OFTO's requirement to ensure the cables are not interfered with / impacted upon.

#### Option Agreement - Requirement to retain 40m Strip

Andrew (Thomas) queried Rampion's requirement to retain a 40m strip in perpetuity. Having re-read the draft Option Agreement, I can confirm that Rampion only seek the 40m strip to be safeguarded from any form of development or the raising or lowering of the levels from the date of signing the Option Agreement until the date that entry onto the land is taken (or the date that the rights are terminated). Rampion are only seeking a permanent 20m easement strip (where open cut and slightly wider at landfall compounds / HDD locations) for a term of 99 years.

#### **Impact on Campsites**

Alison (Baird) asked at the meeting whether construction access was required adjacent to the Cuckoo and Billabong campsites. I confirmed that this is only an operational access requirement (post scheme) and that this may be in the form of a man in a white van requiring access on a once in a six-monthly basis.

The Billabong campsite is in close proximity to the HDD pit (crossing under the River Arun) and it is acknowledged that during the undertaking of the drilling this may be disruptive to the campsite users, and may take approximately 4 months to complete. At this time, Rampion cannot give any assurances as to when this HDD will be undertaken, as construction scheduling will be undertaken following detailed design by the principal contractor. However, Rampion are willing to discuss the timescales / project programme (and any

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further mitigation measures) as and when the principal contractor has been appointed and a programme of works has been finalised.

## **Black Poplar Trees**

Yours sincerely

You have clearly stated your concerns in relation to the nationally rare indigenous Black Poplar trees growing on your land. Rampion can confirm that they know the location of these trees, will seek to avoid them where possible, and have added the commitment in the Outline Code of Construction Practice to protect and translocate if required species such as Black Poplar (See 5.6.38 and 5.6.39 in the Outline Code of Construction Practice [REP3-025 in the Examination Library]).

Following receipt of this letter, I would be grateful for the opportunity to have a further discussion with you (and Andrew Thomas) to establish whether we can progress matters by incorporating some aspects of this letter into the Heads of Terms.

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Cc. Alison Baird (via email

Andrew Thomas (via email –



